

THE *Gal. 4 D.D. 81*
Freemen of London's

Necessary and Useful &

COMPANION:

OR, THE *1130 6/10*

Citizens Birth-right,

WITH

The Foreigners and Aliens best Instructor;

Treating of the City's Antiquity, Grandeur, Magistracy, Customs, Grants, Privileges, Trade, and the Advantages thereof; also matters relating to Widows and Orphans of Freemen, Duties payable, and wherein Freemen are exempted, and what herein relates to Foreigners and Aliens. What relates to Masters and Apprentices, &c. Of Proceedings in the City Courts, viz. Huttings, Lord-Mayor's Court, Chamberlain's Court, the Court of Request, or Court of Conscience, Court of Aldermen, Court of Conservator of the River of *Thames*, Court of Orphans and Sheriffs Court.

The Court and Office of Assurance for Merchandize, and what relates to Dealing, &c. Of Proceedings in the Ecclesiastical Courts, Court of Marshalsea, Palace Court at *Westminster*, Dutchy Chamber, Commission of St. *Martin's Legrand*, &c. with some Directions for Grand and Petty Juries, and how to remove Causes by *Habeas Corpus*, sue to the Out-lawry, and Reverse it. Directions for Fair keepers, Toll-men and Clerks of Markets. The Duty and Office of Constaibles, Church-wardens, Overseers of the Poor, Surveyors of the High-ways, and Scavengers, Directions for Clerks to Justices of the Peace, and other useful Things.

L O N D O N: Printed by W. Pearson for J. Baker
at Mercer's Chappel in Cheap-side. 1707:



THE
P R E F A C E
T O T H E
R E A D E R.

REader, in these few Sheets you will find contained so many material things useful and necessary to be known, by the Citizens of *London* and others, whether Natives or Strangers, as they may concern Either, that no work tho' never so Voluminous contains the like; being gathered (as choice Flowers out of a rare Garden to make up one Posie, for the Pleasure and Profit of Men of all Conditions) from the Labours and Knowledge of the Learned and Judicious in such Affairs, that have been, or are in the past and present times, over

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and above the Knowledge, Experience and Practice of him that has Compiled it for your Benefit and Advantage; so that in a little Compass you have far more than upon a first View you can well imagine, done with such Caution, Care and Industry, that it cannot but claim your Receptance where ever it shall come to hand, and be presented as a Jewel or Treasury of Knowledge in such things as it Treats of, which are numerous and various, and in all respects very weighty, and in many particulars concerns the Kingdom in general, as well as the City of *London*.

Herein you may see the Antiquity of that famous City, and by what degrees through the favours of Kings and Queens of *England*, in Charters, Grants and Privileges confirmed (also by many Acts of Parliaments from time to time) it has arrived to its present flourishing Grandeur, in a well ordered Government, and abounding in Trade and Riches above other Cities; it Treats likewise of her Courts of Judicature and other Courts, and Offices, places of Trust, and Officers, Advantageous Customs and Privileges, as they relate to Citizens and Strangers
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so amply, and in so plain a Method as the Nature of the things require, that none need be ignorant (how to order and manage Affairs that these ways concern them prudently and to the best Advantage) unless they willfully or negligently will be so. And extending yet farther, it contains many necessary Directions in matters relating to Trade, Merchandize, or Commerce with the Privileges and Advantages therein not generally known, and Instructions as to Grand and Petty Juries, and others very necessary for them to know.

It extends yet farther to Courts not within the City or Liberty; also to Fair-keepers, Toll-men, Clerks of Markets, and Penal Statutes in what cases they are in Force, and how to be Executed; with such directions to Constables, Church-wardens, Overseers of the Poor, Surveyors of High-ways and Scavengers, as may well serve to Instruct all so concerned throughout the Kingdom. Likewise Clerks to Justices of the Peace, in many useful Presidents that their Business requires in and out of Sessions, and how Prisoners, or such as are in trouble, may best relieve themselves; here you

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may find how to Traverse or Remove an Indictment, bring a *Habeas Corpus* to remove the Body or Cause, make Attachments or Sequestrations, and how to sue to the Out-lawry, and in what manner it is to be reversed.

This is but a slender Account of what the Book contains, and a Preface would swell too large, and be tedious should all you will find in the ensuing Pages be Enumerated in it, or to speak of all the Advantages that may possibly accrue by it; therefore not doubting but they will be many, I shall conclude in wishing them so, and only say, That a more useful Book of this Nature never appeared before in the World than this, therefore I shall leave it to the Perusal and Practice of the Reader, and think my time well bestowed, if it does the good it was designed for, and meets with the success it Deserves, especially from all unprejudiced or unbiaſſed Persons.

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THE
C I T I Z E N
OF

London's Birth-Right, &c.

CHAP. I.

*Of the Antiquity and flourishing Estate of
the City of London, by way of Introdu-
ction to the necessary things contained in
this Book.*

THE City of *London* is as famous in all other Respects, as it is for its Antiquity, being accounted amongst the Ancientest Cities of the World now flourishing. It was first founded by the *Britains* inhabiting this pleasant Island 1108 Years before the Birth of Christ; about the time that the Prophet *Samuel* was Judge in *Israel*, 350 years before the building of *Rome*, but not Enlarged, Walled and

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Beauti-

Beautified till the Reign of *Lud* King of the *Tri-nobantes*, that inhabited *Middlesex*, *Essex* and *Hartfordshire*, as their part and portion of the Island, which was a little before the landing of *Julius Cæsar* with his *Romans*. This King enlarged the City *Eastward* as far as *London-stone*, built Walls and Gates, one of the latter in the *West* part, bearing his Name in Memory thereof to this day, he new naming the whole *Cairolud* or *Lud's-town* now corruptly called *London*. It is mentioned by many worthy Authors of the Ancients, as *Cornelius Tacitus*, who first called it *Londinum* or *London*, who says, it was then a City very famous for the multitude of Merchants and Traffick or Commerce. *Herodian* in the life of the Emperour *Severus*, says, that it then was a great and rich City.

In the Ancient flourishing State of *London*, it was called by some Historians *Augusta*, to note its Majesty and Dignity above many other Cities in the World, and had leave under the *Roman* Emperors to erect a Mint and Coin Money with this Impression, *P. Lon. S.* which stands for *Pecunia Londino Signata*, viz. Money stamp'd in *London*, a favour granted but to a very few Cities, and those of extraordinary deservings; but since those times, the City has been much enlarged and inhabited by rich Traders and Artificers, encouraged by the many favourable Grants and Charters of several Kings, &c. So that at this day it is one of the best Peopled and Well-governed Cities in *Europe*, lying in a healthful Air, enjoying the salubrious Breezes of the *Eastern*, *Western* and *Southern* Seas, with the wholsome gusts of fresh Air from the Country round-about it, Situated upon gradual rising Hills, the *Thames* washing the *South-side* of it, in the bending as it were a half

Moon ; by which and the adjacent Countries, it is supplied in abundance with all things necessary, being so near the Sea, that in 12 hours it is by the help of the Tide capable to receive the greatest Ship that sails on the Ocean ; and to conclude this Head or Introduction to more useful matters,

The City of *London* is Great and Opulent, full of People and Trade, eminent for the Charters, Privileges and Immunities with which it is Invested, Renowned for its many Courts and Counsels, Companies and Societies ; and for the good and wholesome Laws therein instituted and ordained, for the better Government of the several Ranks and Orders of Men amongst them, whereby they are enabled to obtain their own Justice, maintain their own Peace, and purchase all the good and advantageous ends of Trade with the better success and greater security.

And as the Happiness and good Estate of this great City doth depend upon the right use and improvement of those Advantages, and due and careful Execution of those good Laws, so the honour and esteem which *London* most justly finds from all Men, both at home and abroad, doth principally result and arise from hence, of which good Laws, Customs, &c. that none be ignorant ; I intend peculiarly to treat of in this Book for the advantage of Citizens and others.

C H A P II.

*Of the Magistracy of the City of London,
their State and Grandure, and Inferiour
Officers in their several Degrees.*

AS for the Magistracy and Government of this City, which renders it famous for a well regulated one. A Lord Mayor is yearly Elected on *Michaelmas-day* out of the Aldermen, and on the 29th. of *October* following, goes by Water to *Westminster* in a splendid manner, to be sworn before the Barons of the Exchequer; when upon his return, he is received with Extraordinary Pomp and Splendor, and great feasting is made by all the Companies. His Domestick attendance is very honourable, having four Officers that wait on him, who are reputed Esquires by their Places, *viz.* The Sword-bearer, Common-hunt, the Common-cryer and Water-bailiff; there is also a Coroner, three Serjeant Carvers, and three Serjeants of the Chamber, a Serjeant of the Channel, four Yeomen of the Water-side, an under Water-bailiff, two Yeomen of the Chamber, three Meal-weighers, two Yeomen of the Wood-wharfs, most of which have their Servants allowed them, and have Liveries for themselves.

His State and Magnificence when he appears abroad is very significant, which is usually on Horse-back, with rich Caparisons, riding always in long Robes, sometimes Scarlet richly Furr'd, sometimes Purple, sometimes Puke, and over his Robes a Hood of Black Velvet, said to be a Badge of a Baron of the Realm; he wears likewise a Gold-

Gold-chain, or Collar of SS's with a right rich Jewel pendent thereon, and many Officers attending on him.

The Lord Mayor of *London* is stiled Right Honourable, during the time of his Mayoralty, and on the day of any King or Queens Coronation is chief Butler, bears the Golden Cup amongst the greatest Nobles of the Kingdom, which serve on that day in other Offices, and has the Cup with the Cover of it for his Fee. As for his Power within the Cities jurisdiction it is very great, as being the Queens Majesty's Lieutenant of the City, holds Courts of Record, hears and determines matters of great Weight, and is chief Judge of the Court of Sessions for tryal of Life and Death, though the Judges of the superior Courts be present.

The two Sheriffs, as the Lord Mayor, are chosen by the Citizens, being Liverymen, at the *Guild-Hall* of the City, on *Midsummer-day*, out of the ablest Citizens, being Sheriffs also of the County of *Middlesex*, a privilege not granted to any other City or Country, for therein the People have not the Election of their Sheriffs. The Sheriffs of *London*, &c. are sworn on *Michaelmas-Eve*, and then presented in the Court of Exchequer, to be approved and allowed, and there being sworn a second time, they enter upon their Office: They have a privilege when chosen to Fine, if they think not fit to serve, as it will be allowed by the Lord Mayor and Court of Aldermen; or it is held, they may be excused if they take their Oath they are not really worth 10000 *l*.

These Sheriffs have greater Perquisites and Privileges in some respects than others; for in the year 1199. granted the sherifwick of *London* and *Middlesex*, as King *Henry* the first had done before him,

him, for the sum of three hundred pounds annually paid into the Exchequer, all Fines (except Royal Fines) that should arise within the City or Liberties ; also Felons Goods, Deodands, Waives, Strays, Penalties and Forfeitures, for the better ease of the great charge they are at in maintaining Prisons, Prisoners, treating the Judges, and supporting their own Grandure, &c. and this was more especially confirmed in the first year of the Reign of *Richard I.* and in the year 1471. they were appointed to have 16 Officers or Serjeants, and every Serjeant to have his Yeoman (no more) and six Clerks for the well ordering their Courts, viz. a Secondary, a Clark of the Papers, and four other Clerks, beside the under Sheriff's Clerks, their Stewards, Butlers, Porters and many other Attendants.

For the better Government of this great City, there are 26 Aldermen, one to every Ward, and these, as the former, are chosen by the Freemen of the respective Wards that are House-holders paying all Taxes, tho' they are not on the Livery, and usually two being returned to the Lord Mayor and Court of Aldermen, they Nominate one to serve for that Ward, who has his Deputy to officiate under him, which is in his own choice ; and upon the Death of any Alderman, it is in the choice of an other sitting Alderman to put up, &c. to change his Ward if he thinks fit for that which is vacant, and then the Ward he leaves must chuse a new.

All the Aldermen that have passed the Chair, &c. are by their Charter Justices of Peace for the City.

The Recorder of *London* is usually a grave and teared Lawyer, skilled in the Customs of the City, and is assistant to the Lord Mayor, taking his place

place in Courts and Councils before any one that hath not been Mayor, and pronounces the Sentence of the Court.

The Chamberlain of *London* is an Officer extraordinary considerable in point of Power; for without him can no man set up Shop or occupy his Trade without being Sworn before him, and made free of the City: No man can set over an Apprentice to another but by his Licence, and he has power to imprison any that disobeys his Summons, or any Apprentice that Misbehaves himself, or otherwise punish him; he is Elected in Common-Hall on *Midsummer-day*, as are the two Bridge-masters. The Auditor of the City and Bridge-house accounts, and the Ale-conners.

There is also a Common Serjeant, Town Clark, or Common Clark, and Remembrancer.

When they choose Representatives to sit in Parliament, the Aldermen meet the Lord Mayor and Sheriffs at the *Guild-Hall* in the Morning, and sit in the Hustings Court, till the Commons make choice of such worthy persons as they think fit for so great a Trust by the majority of Hands or Votes.

As for the Common Council, they are chosen for the respective Precincts, within the City and Liberties, out of the gravest Citizens, and are in number 231. which the Lord Mayor assembles as he sees cause; which together with him and his Brethren the Aldermen, make such By-laws and Acts, as are convenient for the Regulating and well Governing of the City, consistent and agreeing with the Fundamental Laws of the Kingdom; so that every thing is managed with such Prudence and Integrity, that they tend to the happiness and wellfare of the Citizens, and to the admiration of Strangers, to see so Great and Populous a

City kept so quiet and peaceable, that rarely any Outrages, Tumults or Riots happen, as in Transmarine great Cities they are very frequent, and by Night the Watches are so advantageously and carefully placed to guard the sleeping Inhabitants and their Houses, that but few Depredations, or Robberies are committed in the Night, it being apparent at the eight Sessions annually holden at the *Old-Baily*, that the greater part of the Mischiefs are committed in the Day-time, more thro' peoples want of caution and circumspection, than any defect or want of care in the well Government of the City; but being to treat of many Offices and Courts with their management and good Order, I shall no longer here insist on this head, but pass to another, touching the Privileges and Advantage of the Citizens of *London*, by the Grants of the several Kings and Queens of this Realm which I shall mention.

C H A P. III.

Many great privileges and Advantages accruing to the Citizens of London by their Charter, and the Royal Grants of Kings and Queens, with Customs and Exemptions, &c.

BY a Charter of *Henry I.* an acquittal of Toll, Tollage, Custage and Custom, viz. that the Citizens of *London* shall be quit and free, and all their Goods throughout *England*, and the Ports of the Sea of all Toll, Passage and Custage.

By a Charter of K. *John*, there was granted an acquittal of duty in the *Thames* payable at the *Tower*, confirmed by K. *Henry III.* And by *Henry II.* it was granted, That if any man in *England* should take any Custom or Toll of a Citizen of *London*, after he shall fail of Right, the Sheriff of *London* may take Goods thereof at *London*, confirm'd by K. *John* and K. *Henry III.* And by a Charter of *Edward II.* the Citizens are not to War out of the City, and the Aids then granted to the King are not by that Charter to be drawn into the Exchequer.

None are to be Amerced but according to the Law of the City by a Charter of *Henry II.* confirmed by *Richard III.* That the Sheriffs of *London* be as other Sheriffs by Charter of *Edw. I.* and their Amercement is not to be above 20*l.* *H. III. Chap. 1.*

By a Charter of *Edw. IV.* Char. 1. Aldermen for the term of their lives shall have their liberty; that is to say, That as long as they shall continue Aldermen there, and shall be at the charge of Aldermen proper; and also those which before had been Aldermen, and born the Office of Mayoralty, shall not be put in any Assizes, Jurys, Attaints, Recognizances or Inquisitions out of the said City, and that they nor any of them shall be Tryers of the same, altho' they touch us, viz. the King or our Heirs or Successors, or others whomsoever.

Aldermen of *London* are not to be made Collectors or Taxers out of the City, nor to suffer for refusal of such Offices; and by the same Charter Aldermen having passed their Mayoralty, are to be Justices of the Peace. The Mayor, Aldermen and Recorder to be Justices of Oyer and Terminer, and the Mayor to be of the Quorum.

By the Charter of *Hen. I.* such as owe Debts to the Citizens of *London*, shall pay them in *London* or else discharge themselves in *London* that they owe nothing.

The Citizens of *London* to whom debts shall be due, may take their Goods in the City of *London* of the Borough or Town, or of the County wherein he remains who oweth the debt.

By Charter of *Edw. IV.* Attachments are to be made by the City Officers in *Southwark*; and by a Charter of *Edw. 6.* the Lord Mayor, Recorder and Aldermen, that are Justices of the Peace in *London*, are to be the like in *Southwark*.

All forfeited Recognizances about Inmates Ale-houses, Bastard Children, Appearances at Sessions, of Gaol-delivery, Fines and Issues of Jurors (except Fines or Issue Royal, &c.) are granted to the City by Charter of *K. Charles I.* Chart. 1. That no Aliens are to keep Houses in *London*, nor Brokers by Charter of *Edw. III.*

No Stranger is to buy Goods of weight before they are weighed by the King's Beam.

By Letters Patents of *K. Hen. VIII.* in the 28th of his Reign. it was granted to Mayor, Commonalty and Citizens of *London* and their Successors the keeping of the Hospital of *Bethlehem*, as Masters, Keepers and Governours of the said House or Hospital, with all the Lands, Tenements and other things appertaining thereto for ever.

K. James I. confirmed the Charters and Grants of his Predecessors, and granted to the Mayor, Commonalty and Citizens of *London* and their Successors, the weighing of all Coals, call'd Stone coals, Earth-coals and all other Coals weighable of what kind soever, in or at the Port of *London*, coming or brought up the River of *Thames* in any Ship, Boat, Barge or other Vessel floating, or being in a

ny Port of the said Water of *Thames*, from *Stanes-bridge* to *London-Bridge*, and from thence to *Yendal* or *Yenland* towards the Sea, for which the duty payable is 8 d. for every Tun, and none are to unlade Coals without giving notice to the Mayor of the quantity of what sort soever are brought to the City, &c. No Market of Coals to be in any Boats, Lighters or other Vessels whatsoever, except in the Ship that first brought in the Coals: No Forestalling, Ingrossing or Regratering to be used upon pains and punishments the Law provides for Contemnners and Neglecters of the Royal Mandate.

By a Charter of *Edw. IV.* in consideration of 7000 l. was granted to the Mayor, &c. the Offices or Occupations of packing all manner of Woollen Cloaths, Sheep-skins, Goats-skins, Calves-skins, Vessels of Amber, and all other Merchandizes whatsoever, to be Pack'd, Pip'd, Tun'd, Barrel'd, or any wise to be included with supervising of all manner of opening customable Merchandize whatsoever, which shall be carried to *London* from the Water of *Thames*; as also such as shall arrive by Land within the Liberties and Franchises of the said City and Suburbs; and also the Offices of Carriage and Portage of all Wools, Tinn, Bails, Sheep-skins and other Merchandize whatsoever, which shall be carried to *London* by the Water of *Thames*, to the Houses of Strangers, and from the said Houses to the same Water, or of other Merchandize which ought to be carried, being in any House for a time; and also the Office of Garbling all kinds of Spices, and of other Merchandize that requires Garbling; also the Office of Gauger, the Office of Wine-drawer, &c. to be exercised by them or their Deputies. The Office of Coroner to be at the Mayors, &c.

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disposal, severed from the Office of chief Butler and their Liberties and Privileges are confirmed by *Edward III.* with other Additions, *viz.*

Citizens may demise Land, in Mortmain or otherways.

Merchants strangers, to sell Goods within 40 days, and may not keep Houses, but be with Hosts, that is, Lodgers.

No Citizen is to be compell'd to plead without the Liberties of the City, concerning any thing that happens within the Liberties thereof.

No Escheater is to exercise that Office within the Liberties of the City but the Mayor, for the time being is to execute it : Citizens to be taxed in Subsidies, as Commoners, not as Citizens, and no Purveyor to make any price of the Goods of the Citizens without the consent of the Party.

No price to be made of the Citizens wine without their consent, no Purveyor to be a Merchant of the Goods whereof he is Purveyor.

That no Citizen is to be impleaded in the Exchequer unless it concerns the King, &c.

By the Charter of *Hen. III.* the Citizens are allowed to traffick with their Merchandize or Commodities throughout the Kingdom, and other its Dominions, as well by Sea as Land, as they shall see it Expedient, without any let or interruption, quit from all Custom, Toll, Lestage [that is, a Custom challenged in Fairs for carrying of things] and paying, &c. and may abide for their Trading wheresoever they please in the same Kingdom, &c. as in times past they were accustomed.

Hen. 7. Granted a Charter, that no Stranger from the Liberty of the City may buy or sell from any other Stranger to the liberty of the same City, any Merchandize or Wares within the Liberties

ties of the same City, upon pain of forfeiting the same Goods, &c. to the use and profit of the Mayor and Commonalty, &c. Strangers may buy things in gross for their own use, but not to sell them again.

None is to take Loading in *London* by force, by the Charters of *Hen. I. Rich. I. Hen. III.*

By a Charter granted by King *Charles I.* the Offices of Package of Cloath, Wool, Woolfells, &c. Baillage of Goods, Portage of Goods, Scavage of all Goods, customable, &c. are granted to the Mayor and Commonalty with the power to Administer an Oath for the discovery of Goods concealed.

All Fishers, Vintners and Victuallers, coming into the City, shall be under the Rule and Governance of the Mayor and Aldermen, 7 R 2.

Merchants may sell Wine, Oyl, Wax and other Merchandize, as well by Whole-sale as Retail to Her Majesty's Subjects, not being Londoners, notwithstanding Franchise to the contrary, 7 Hen. 4.

The Mayor, &c. next Court after the first of *Michaelmas*, is to name Water-men yearly to be Over-seers of rowing between *Gravesend* and *Windsor*, and regulate abuses, 2 and 3 Phil. and Mary, chap. 16. Sect. 3.

The Mayor, &c. is to Assess the Fare of Water-men, and two Privy Counsellors to sign it, 2 and 3 Phil. and Mary, cap. 16. Sect. 11.

And these with many more advantageous Grants, Privileges, Liberties and Franchises, are confirmed to the City of *London*, by the Royal Charter granted by *K. Charles II.* the 24th. of *June* in the 15th. year of his Reign; confirming all Charters of the City granted by his Predecessors, wherein

wherein they are recited at large, this being only an Abstract of what I conclude most necessary to be known by Free-men of *London* and others as a matter of great weight and concernment.

C H A P. IV.

The privilege of Aliens and Foreigners bringing Wares and Merchandize to the City of London, very necessary to be known by them.

A Liens and Foreigners resorting in great numbers to the City of *London*, being the chief mart or place of Trade for the Kingdom, many useful Statutes and Customs were made to regulate or favour them; amongst which briefly these *viz.*

An Act was made, That all such Aliens as should reside in and about *London*, should be within and under the Governance of the Mystery or Craft whereof they are and taxable to their Mystery 14 *Hen. 8. cap. 2.* And afterward a Decree was made in the *Star-Chamber*, and an Act, That such Strangers should pay Scot and Lot, Tax and Tollage, &c. as the Masters, Wardens and Companies do; as also that they should make Oaths and other things, 21 *Hen. 8. cap. 16.*

That every Stranger may sell his Merchandize by safe conduct of the King in any place in *England*, and except to the King's Enemies, 2 R. 2. cap. 6. Merchandize 17. and after this a Stranger might sell as he might before, saving the Franchises and Liberties of the City of *London*, 6 Hen. 4. cap. 4.

Every man who bringeth Merchandizes to *London*, or other Cities, Boroughs or Ports of the Sea, may sell by Retail or in Gross, notwithstanding any Franchises Grants or Customs to the contrary, 25 Edw. 3. cap. 2.

That Aliens and Denizens may buy and sell Merchandize coming to *London* in Gross and not by Retail, paying the customs, and shall not be disturbed by the Citizens of *London*, notwithstanding any Franchise heretofore proved to the City of *London*, 7 Hen. 4. cap. 9.

Aliens and Foreigners being in amity with us, who come with Fish or other Victuals to *London* or other places, shall have safe Conduct, 6 R. 2. cap. 14. Victuals 5.

CHAP. V.

Of Wills, or Testaments of Freemen of London, and how to be taken and ordered by the custom of the City; also some advantages relating to Orphans, &c.

MEN and Women by the custom and usage of the City of *London*, may devise their Tenements, Rents and Reversions within the City and Liberties to whom they will, and of what Estate

state they will; and also may Devise a new Rent to arise from their Tenements in manner as best liketh them, and those that are Free-men may Devise their Tenements in Mortmain.

Infants under Age may not Devise nor can Females Coverts devise their Tenements by Licence of their Husbands, nor in other manner during the Coverture; nor may the Husband Devise his Tenements to his Wife for a higher Estate, upon penalty of losing the whole; nor may the Husband Devise the Tenements descended to his Wife, nor the Tenements that the Husband and Wife have jointly purchased.

But if the Husband and Wife have Tenements jointly to them, and the Heirs of the Husband, the Husband may Devise the Reversion.

All Testaments by which any Tenements be Devised, may for the more firmness and security, be Enroled in the Court of *Hustings*, being a Court of Record, and may be done at the suit of any that may take advantage by the said Testament, and the Testament which ought to be Enroled, shall be brought before the Mayor and Aldermen in full *Hustings*, and there be proclaimed by the Serjeant, and proved by two discreet persons well known, who shall be Sworn and Examined touching all the circumstances relating to the said Testament or Testaments, and of the Sealing, &c. And if the proof be found Good and Authentick, then an Enrolement will be made in the *Hustings* of Record, and no Testament *nuncupative* nor other Testament may be Enroled of Record, except the Seal of the Testor be affixed to the said Testament.

The Testaments within the City ought by custom be adjudged Effectual and Executory, having regard to the Testator's Will, tho' the words may appear

Rent appear defective, and not so agreeable to Common-law in form, &c.

The Lord Mayor and Aldermen for the time, being by the custom of the City, shall have the Custody, and Wardship, and Marriages of all Orphans of the said City after the death of their Ancestors, although the said Ancestors do hold to them, and the City of any other Lord by what service soever.

The Lord Mayor and Aldermen may enquire of all Lands and Tenements, Goods and Chattels within the said City appertaining to such Orphans, or otherwise commit the said Orphans, together with their Lands and Tenements, Goods and Chattels to their Friends by sufficient surety found of Record in the Chamber of *Guild-Hall*, to maintain decently and conveniently the said Orphans during their being under Age, and their Lands and Tenements to repair, and their Goods and Chattels to keep in safety, and render a satisfactory account before the Mayor and Aldermen when thereto required, to the profit and commodity of the said Orphans, when they shall become of Age, or when they shall be put to a Mystery, or shall be Married by the advice and consent of the said Mayor and Aldermen; and this in all cases, unless it be otherways ordained and disposed for the said Orphans, or for their Lands, Tenements, Goods and Chattels, by express words contained in the Testaments of their Ancestors.

No such Orphans ought to be married without the consent of the Lord Mayor and Aldermen, where Lands, Tenements, Goods and Chattels within the said City are devised to an Infant under Age; and in case though the Father be living, that such an Infant is no Orphan, yet by the

the usage of *London*, the said Lands and Tenements, Goods and Chattels shall be in the custody of the Mayor and Aldermen, as well as of the Orphans to maintain and keep them, to the use and profit of the said Infant, except the Father or some Relations or Friends find sufficient surety of Record to maintain and keep the said Lands, &c. to the use, behoof and profit of the said Infant, and thereof to render a good and legal account. These and many others are the advantages of this great and well govern'd City, as will further appear.

C H A P. VI.

Several particular Privileges and Customs proper to the City of London, relating to the Magistracy and commonalty for good Government, and advantages beyond other Cities or Towns Corporate, &c.

THe City of *London* shall have their peculiar Clerk of the Markets within their Jurisdiction.

And Justices within the Franchises shall use their Liberties as largely within the Franchises as other Justices may do, and shall hold their Sessions at the time they used to do, and shall have such Fines and Amercements, &c. which they have by the King's Grants and usages as they used before Statute 27 Hen. 8. cap. 24.

Tene. The Mayor of *London* may remove all Kiddels
 custo. in the water of *Thames* and *Medway*, and conserve
 of the the Peace between *London* and the Bridge of *Stanes*,
 ne use 13 *Hen. 2. cap. 9.*

her or A Statute was made, that of all the Breaches
 ety of made by the River of *Thames*, where the Mayor
 s, &c. of *London* hath the conservation of the Peace, and
 infant, the Breaches are in the Lands of other Lords, the
 count, Mayor of *London* shall not in this case have the
 ges of Governance nor Rule, nor Authority in any of
 further the said Breaches, nor the punishment of any such
 Places and Creeks for the using unlawfulness,
 Stat, 4 *Hen. 7. cap. 15.*

That the Grants of the Office of Awnage by the
 City of *London* shall be good, notwithstanding the
 Statute which makes the King's Letters Patents
 void, 31 *Hen. 6. Office 8.*

From That *London* shall take Scavage called Shewage
 ating of any Merchant, Denizen, within the City, ac-
 good cording to the right of the City, but in no other
 other Town, 19 *Hen. 7. cap. 8.*

Every one who brings Victuals to *London* may
 sell it without disturbance to Fishmongers, Butch-
 ers, Poulterers and others, and that the Mayor
 and Aldermen may redress the faults of Fishmon-
 gers, Butchers and Poulterers; as also those that
 sell Wine, Ale or Beer, notwithstanding Charters
 of Franchise, Custom or Prescription, or other
 Privileges to the contrary, 13 *Edw. 3. cap. 10.*
Victual 4.

The Wardens of the Coopers with the Officers
 of the Mayor, shall search and view all manner of
 Barrels, Kilderkins, &c. to see if they be fizeable,
 8 *Eliz. cap. 5.*

By an Act, 4 *Hen. 7. cap. 3.* no Butcher is to
 kill any Ox or other meat within the Walls of the
 City of *London*, nor in other Cities, Burroughs
 or

or walled Towns, notwithstanding we find the contrary practised to the great Annoyance of the Inhabitants.

Shoomakers and Sadlers who cut Tann'd-leather in *London* and the Suburbs, shall not curry any Tann'd-leather within their Houses, 5 *Edw.* 6. repeated by 5 *Eliz.* cap. 8. And that the Leather shall be bought at *Leaden-hall*, and what feared the Mayor of *London* shall make or cause to be made, and under whom the survey of the Artificers shall be, 5 *Eliz.* cap. 8.

That all Cloaths be measured by the Awnager in Cities, Boroughs and other Towns within Franchises; and if they be less than measure to be forfeited, and if the fault be in the Awnager he to be imprisoned, 25 *Edw.* 3. *Stat. de pannu Drapery* 5.

That the Merchants of *London* be free to pack their Cloaths, and quit of packs as are all other Merchants and Strangers within the City, or within other Cities or Boroughs within the Realm, and the Letters Patents to the contrary shall be void, 1 *Hen.* 4. cap. 16.

That all Woollen Cloaths, half Cloaths, Kerfies and Sleits, &c. shall be sealed with Wax at both ends, and that more be not taken for it than usual; if not in *London* and *Bristol*, that they may be sealed with Lead, 17 *Edw.* 4. cap. 5.

Cloaths shall be pressed in *London* with a cold press without Covin, 4 and 5 *Phil.* and *Mary*, *Drapery* 52.

Cloaths shall be searched openly in *London*, and that Cloaths upon Tenter shall not be drawn more in length or breadth, than before by the surveyance of the Mayor, &c. 1 *R.* 3. cap. 8.

These and many other advantageous Statutes were made; such was the care of the City of London by its Ancestors, to encrease its Grandure and Tranquillity.

C H A P. VII.

Of Duties to be paid by Citizens and Strangers in the port of London, and upon what; also in what cases Citizens are exempted, with an account of the place held lawful for the laiding and unlaiding Goods, &c.

Great are the privileges of this City above others for Scavage, an ancient Toll or Custom taken by the Mayor, Sheriffs, &c. For Wares shewed or offered to sail within the limits of their Precincts, consisting of two parts, *viz.* payable by Denizens, and payable by Aliens or Strangers, being rated in Tables set up for that purpose, approved by Authority, and are to be leavied on Goods inward and outwards; and all Goods mentioned in the Table of Scavage, and not mentioned in the Book of Rates, shall pay after the rate of one penny in the pound according as they are expressed or valued in Her Majesty's Book of Rates, and all others not expressed therein, shall pay the same rates according to the true value.

All private Baulks of eight Inches square are by the third Article annexed to the Book of Rates, and reputed timber valued at three pence the foot so foot, being accounted the load at 12 s. 6 d. so that this duty is one half penny and half a farthing the Load.

Pack-

Package is another duty which is likewise limited and rated in a Table, called the Table of Package Duties, and all the Goods therein mentioned pay one penny in the pound according as they are rated in Her Majesty's Book of Rates, and all others not mentioned therein shall pay at the rate of one penny in the pound according to their true value.

Another Ancient Duty there is, called Water Bailiage, which for many years the City has claimed and received for all Goods and Merchandize imported from any port in the Kingdom, or out of the Kingdom into the port of *London*; and so likewise with a little Alteration for Goods exported out of the Port of *London*, unless the Goods or Merchandize of Freemen, who are exempted from this Duty, tho' some for reasons best known to themselves do voluntarily pay it notwithstanding.

All Lighters, Fisher-Boats, Wherrys, &c. occupying the River of *Thames* within the limits of the Cities jurisdiction, confirmed by the Charter, pay sums of Acknowledgment or Duty for the same, which annually amounts to a considerable value.

All Markets within the Precincts of the City, pay the duty of Toll to the behoof of the City, for vending such Wares or Provisions as they bring thither.

The Citizens of *London*, viz. those that are Resident, are exempted from the Custom or Impost called Prisage, which is that out of ten Tuns of Wine, one goes to Her Majesty paying 20*s.* for it; but Citizens must not own any such Wines imported by Strangers, under colour to secure it from paying Prisage. But if a Free-man live in an other City, &c. and send Wines to be laden at the Port of *London*, he shall not have the benefit

of Prifage, but muft be refident as aforefaid; for by a private Aft 24 *Hen. 6.* complaint was made that the Lord Mayor would make Strangers Citizens, whereupon it was there declared, That this benefit to be difcharged from paying Prifage, extended not to fuch Citizens as were made free by gift, but to fuch as were legally Citizens by Service or Patrimony, and Refident in the faid City: And it is further obferved, that if any Merchant not being a Citizen, break Bulk tho' he deliver but part of his Cargo, yet the duty is to be leavied upon all as if he had unladed the whole, and this privilege do the Inhabitants of the *Cinque* ports enjoy.

Butlerage or Butherage is 2 s. *per* Tun for wine imported by Strangers, but from this Duty the *English* are exempted as they are Natives.

As for the Port of *London* it is of large extent, as in Exchequer it is fetled and declared, *viz.* from the promontory or Point called the *North Foreland* in the *Ile of Thanet*, and thence *Northward* to the *Naze*-point beyond the Gun-fleet upon the coaft of *Effex*, and fo continues *Westward* up the River of *Thames*, and the feveral Channels and Streams and Rivers falling into it to *London-bridge*.

The ufual known Rights to the port of *Sandwich*, its privileges and Liberties excepted, and in confideration that Ships and Veffels did come up to *London*, and unlade Goods and Merchandize in feveral places, as obfcure Creeks or Stairs, &c. whereby the Customs were run or imbezled to the damage of the Crown revenues; as alfo fome Duties arifing to the City, it was therefore ordained that certain Keys and Wharfs in this moft confiderable Port, fhould be afcertained as lawful places of landing, and purfuant thereto, a Commission was iffued out of the Exchequer to affix and

and nominate all such Keys, Wharfs and other places, as his then Majesty by virtue of such Commission should appoint ; in pursuance to which was pleased to Nominate, Constitute and Appoint the following places as lawful to land Goods and Merchandize, viz.

Chester's-Key, Brewer's-Key, Sab's-Dock, Wood-Dock, Young's-Key, Wiggon's-Key, Ralph's-Key, Bear-Key, Porter's-Key, Smart's-Key, Lyon's-Key, Botolph's-Wharf, Cock's-Key, Hammond's-Key, Fresh-Wharf, Billings-Gate and the *Bridge-house*.

As for *Billings-gate*, it is appointed as a common open place for bringing in Fish, Salt-victuals or Fuel of all sorts, all sorts of Fruits except Groceries, and native materials for building and for exporting the like, but for the Landing or Lading no other Merchandize.

As for the *Bridge-house* it is appointed as a Granary of Corn for the City-store, which is to be landed on its Wharf, but under pretence of that several persons land their proper Corn.

There are also these Keys, viz. The *Custom-house-key*, some Stairs on the *West-side*, whereof are declared not to be proper for lading or unlading Goods in Ships, Vessels, Boats, Lighters, &c. *Sab's-Dock* has a pair of stairs not held lawful for the Landing or Lading of Merchandize, the like have *Summer's-Key, Dice-Key* and *Gaunt's-Key*; therefore it is to be supposed, those Stairs that are excepted against, were built for a conveniency, since the declaring them free places of lading and landing Goods and Merchandize.

C H A P. VIII.

Customs of London in relation to Law-matters, as where they may wage Law, and where not; how a Feme Covert or married Woman may sue, and be sued; how a Man may be obliged to give better security on a Bond before payable, &c.

HAVING thus far proceeded, I come now to speak of some further very useful and advantageous customs of *London*, for the benefit of Citizens and others.

And first, of waging of Law by the custom of *London*, when it may be, and the contrary.

In debt for Board in *London* (that is for Provision of necessaries) brought in the Queen's-Bench or Common-Pleas, the Defendant has privilege to wage his Law, altho' the custom be contrary, if the Action be brought in *London*, for such usages as are not maintained here, but within the custom where the Court is, *M. 1. E. 46. P. 1.*

By the custom of *London*, in Debt upon contract, the Defendant shall not be admitted to wage his Law, if two Citizens will come and make oath before the Mayor and Aldermen, that that the Contract was true, who in a case did so; whereupon the Defendant brought a Writ of Privilege to the Sheriff of *London*, to bring the Prisoner with the Cause; and the Cause of Privilege was, because he was indicted in the City for a Trespass done in *Middlesex* against the Peace, in which case he ought to pay a Fine to the King, and therefore it shall not be intended Covin for the avail of the King, and also because it was set by 12 Jurors.

But if it were a suit between party and party, which gives cause of the Privilege there the same Term, because the Record is in the breast of the Justices, they will examine if the suit here were Covin, and how the Warrant of Attorney, and all the Privileges before the circumstances shall be allowed; but if the suit happens to be entered in another Term, then shall not the Covin be examined, but the Court shall believe the Record, so as the privilege shall be granted, and so here because the King was a party, 2 Aff. 3. 16, 17.

A stranger may wage his Law against the Papers of Citizens, without putting the matter to inquest if they claim debts of him, 38 E. 3. cap. 5.

In debt upon account before Auditors assigned, where no such Auditors were, nor any receipt there upon Examination of their Attorneys within Citys and Boroughs, the party may be received to wage his Law at the discretion of the Justices, 5 Hen. 4. cap. 8.

According to the Custom of London, a Feme Covert shall have Action without her Husband, and an Action may be brought against a Woman that is a sole Merchant or Dealer out of her Husbands Trade, without naming her Husband, 1 E. 4. p. 1. 25 Hen. 6. 38.

Where a Plaint is entered against a Husband and Wife in London, because the Wife is a sole Merchant or Dealer, or against another for finding of better Sureties, if the suit be here in Trespass or otherwise, and the Wife appeareth upon the Exigent, upon a *Habeas Corpus*, or coming in upon a *Capi Corpus*, so as she cannot make an Attorney here, altho' the Plaint be upon the custom only, for which no remedy is at Common-law; yet the Prisoner shall be discharged of the first suit, and shall be sent to the Fleet, and if he who is

Out-

Out-lawed coming to sue forth his Charter of Pardon be Arrested, he shall have his Privilege, and so it shall be with one who cometh to sue forth a Writ of Error, he shall have his privilege here if he be Arrested in the Queen's-Bench.

Where a Gift of Goods is pleaded by a Woman in an Action of Trespass brought, if the Plaintiff saith that the Woman was his Wife at the time, if he says the custom of *London* is, that Women are sole Merchants, &c. the same is a departure, *Hen. 7. 21. Hen. 18. p. 1.*

If a Plaint of Trespass be made against a Man and his Wife, a Trespass solely done by the Wife, then the Wife is liable to answer without her Husband, if the Husband come not, and shall have plea as a sole Woman; and if she be attainted of the Trespass, she shall be condemned and committed to Prison, until such time as she has made a agreement.

By the custom of *London*, if a Plaint be made against a Freeman, resident within the City, or by the Law of the City hath a Summons, because of the Franchise, if the Plaintiff come to the Sheriff and bring with him six or four credible persons being Freemen, that will testifie the Defendant is about to run away, and become fugitive by withdrawing or absenting himself, the Sheriff may Arrest the Defendant by his Body or Goods as a Foreigner, &c.

When a Debtor within the City is bound to another in an Obligation payable at a certain day, but the time not being come for the payment of the Money, and the Creditor finds his Debtor declining and not solvent, but that he will be fugitive, tho' he did not mistrust him when he took the Obligation, but believed him of sufficient ability to make good payment at the day prefixed;

then if he come before the Mayor or Sheriff of the City with six or four credible Freemen of the same, making such a suggestion, and that they will truly testifie, that the Debtor will withdraw and convey his Goods out of the City, or that he is not sufficient to make payment, then the Mayor or one of the Sheriffs before whom the suggestion is made, may Arrest the Debtor, altho' the day mentioned in the Obligation is not yet come, for better security; and for want of Pledges to answer at the day, he may be kept in Prison, until the day of payment be come, and the like for rent or hire of a House in the City, if it appears the party will be fugitive before the time agreed for payment comes, 5 Edw. 4. Lond. 24. 11 Hen. 6. p. 1.

It is ordained that a Merchant may cause his Debtor to come before the Mayor of London, or any other Town where a Clerk is appointed by the King to acknowledge his debt and the day of payment, *vide Stat. Buzel 11 E. 1. Recog. 1.* and since it is enlarged by Stat. *de Mercatoribus*, and a more speedy remedy given, the 13 Edw. 1. to prevent further Controversies and Contentions about Accounts when standing too long before made up and agreed in a right stateing them.

C H A P. IX.

Of Market Overt. Covenant without Deed. Concessit Solvere upon contract made at Sea. Taking Goods to pledge; main Per-nors for the Defendant. Sequestration and Contribution in London.

IN the case of Market Overt, the custom of *London* was pleaded, that they have a common Market for all Goods, and Chattels, and Merchandice, bought and sold in every part of the City, in all Streets and Shops every day, except *Sunday*, from the rising of the Sun to the setting thereof, *Book of Entries* 317. p. 1.

The custom of *London* was pleaded in Trespass, to have a Market every day, and said the Merchandice were brought to his Shop, and there sold to him, *B. Entr.* 606. p. 1.

Note, That every one in *London* claimeth to have a Market every day of the week in his Shop, *M.* 35. *Hen.* 6. 33.

Prescription to hold a Market every day in the week in *London* is good, altho' *Sunday* is forbidden by the Statute, and that it shall be forfeit.

An Action of Covenant lieth in *London* without a speciality, and divers other Actions by custom which do not lie at the Common-law.

Of a Contract made beyond Sea, and upon account here between the parties; if the party by Bill grant to pay it upon Reckoning *Concessit solvere* lieth in *London* upon the Reckoning, for before that Account there was no remedy within *England*, nor no remedy for it at Common-law, and altho'

that the Bill doth recite the Merchandice, yet the *Conceſſit Soluere* doth not rehearſe the Merchandice ſold, but generally for certain Merchandice, Goods and Chattles, *Sibi primo vendit. Conceſſit Soluere*, p. 38. *Hen. 6. 30. p. 1.*

In caſe of taking Goods to pledge, it was agreed, that the cuſtom to keep Goods of any perſon, put to him to pledge by the cuſtom until he payed, is not good; and if it were a cuſtom, it ought to be by ancient Charter of the King, &c. and by continuance after; but the cuſtom of Attaint in *London* is good, as alſo the Creditor may arreſt ſuch Goods which the Debtor hath in his poſſeſſion, and if none come within a year to claim them, that then they ſhall be appraiſed for the duty.

The cuſtom is, that he who is Bail for another in a Plaint of Debt or Treſpaſs to answer the Action, that if he be condemned, the Plaintiff ſhall have Execution as well againſt the Bail or one of them, as againſt the principal at his Election; and it is holden in ſuch caſe, he may maintain for the charge which ſhall be upon him.

The cuſtom of *London* was alledged, that if any matter be pleaded to iſſue, which cannot be tryed by thoſe of the City, that then the party ſhall be examined upon it, and then that Judgment ſhall be according to what is found by that Examination; and if the party refuseth to be examined, then Judgment hath uſed to be given againſt him. *Book of Entries, 203.*

As touching Sequeſtrations by the cuſtom of *London* in an Action of Debt, the Defendant ſhall have four Defaults, and if he cannot be found, but hath ſhut up his Shop, and is gone, a Precept ſhall be to the Serjeant at the Plaintiff's requeſt, to ſequeſter the Goods in his Houſe, 11 *Hen. 7. 2. p. 2.*

As touching Contribution.

Debt was upon the custom of *London*, because the Plaintiff and three others were bound jointly and severally in one Bond, and one pays all the debt or part, or the whole is recovered against him; he may have an Action of debt for the Partition against the other Obligors. *Enterics 1660.*

☞ Note, In this Chapter having said something of Market Overt in *London*, as the Citizens in their Shops may have every day in the week in their Shops, *Sunday* excepted; yet take this as a Caution by the way, it is for such Goods as the party sells and belong to his Trade, and for such giving a marketable and valuable price in buying in their Shops; it is justifiable, if Goods are not rightly come by unless they know, because their Shops are their Market; but suppose a Goldsmith buy stolen Goods at an Ale-house, or at any place not being his Shop, here he is not warrantable, but the Law is against him.

And thus having spoken something, and given a light into the Customs, Privileges and Advantages of the City of *London*, I now proceed to take a view of the Courts of Judicature, by which means chiefly Trade and many other things are so well ordered and regulated; and for the Antiquity of it, I shall begin with the Court of *Hustings*.

C H A P. X.

Of the Court of Hustings held in the Guild-hall in the City of London, and the manner of proceeding therein, &c.

THIS Court is of great Antiquity, and many ancient Writers make mention of it with much respect; as the compiler of King *Edward's* Laws and others; and on all hands it is held to be the highest and most ancient Court of the City of *London*. As for its Name, it takes it from the place of keeping the Court, for *Hus* among the ancient *Saxons* signified a House, and *Dirg'D Ring* or thing signified a Cause or Plea, and so *Husting* signified the House of Causes or Pleadings; and the before mentioned Law of *Edward* the Confessor, commands the *Hustings Court* to be kept every *Monday*, tho' now it is held upon a *Tuesday*; yet that it may not be observed by Monuments and Rolls of the Court, to have differed too much from the primal Institution, it is yet said and written to be held upon the *Monday*.

This ancient Court of Record is held in the *Guild-Hall* before the Lord Mayor and Sheriffs of *London* for the time being, and when any cause or matter is to be argued and tryed here, our Recorder of the City sits with the Lord Mayor as Judge, giving Rules and Judgment therein.

This Court is as it were distinguished into two Courts; for one week, the Judges sit upon Pleas meerly Real, and the next week upon Actions mixed, or of any other nature whatsoever, inso-much that all Lands and Tenements, Services and Rents within the City of *London* and Liberty, are

are pleadable in two *Hustings*, one whereof is called *Husting de Placito Terræ*, *Hustings* of Plea of Land, and the other *commun. Placitor. Husting. Husting* of Common Pleas, which *Hustings* are held in the *Guild-hall* before the Mayor, and Sheriffs, and Aldermen every week; the days *Monday, Tuesday*, unless Holy-days or other hinderances.

If a man be impleaded in the Common Pleas of Land in *London*, the Tenant in such case shall say, that the Lands are within *London*, and that time out of mind, &c. every one hath been impleaded for Lands there within the City in the *Hustings* before the Mayor and Sheriff, &c. and not elsewhere; and so it is in the five Ports, notwithstanding it be not shewn how the Franchises began, on which is grounded the Prescription, for the Liberties of the City of *London* are confirmed by *Magna Charta*; *Quod Civitas Habes, &c. omnes Libertates suas illasas*. And here note the Plea is only in the *Hustings*, M. 2. E. 4. 17. 22.

As here to instance a Tenant of Tail of Lands in *London*, devised his Lands to his Wife, who is made Executrix, and the Will was proved in the *Hustings*; and nevertheless she claimed her Free-bench by alledging the custom is, that the Widows in *London* had used to have the chief House in which the Husband deceased dwelt, to hold for so long time as she continued unmarried as their Free-bench in name of Dower, in which house the Wives by custom might enter after the decease of their Husbands, without any other Execution or Livery, and shewed by replication in Assize, that she entered where the Tenants in Assize pleaded a descent in Bar to stop the Plaintiff of her Free-bench, if there were any such custom; and the Defendant by rejoinder pleaded, that the Plaintiff proved her Husband's Will, and that she was in

by force of the Devise, and traversed without that, that she was seized as of Free-bench, and by the opinion of the Court it was held good without shewing the Wife had sued forth Execution upon the Will, and afterwards was the issue joyned upon the Bar, that the Defendants were in without wrong or disseisin, and the Plaintiff was barred in the Assize, and not there, that it is said that in the Assize in *London*, they use to set down the year and day of the disseisin, which is contrary to other Assizes and Actions real and mixed, 20 *Ass. 4. Pl. 16.*

But since real Actions have grown out of use by the trying of Titles, and the recovering of possessions by *Ejectione Firme*, the ancient custom and practice of this Court of *London* may be said to have declined.

In this Court Deeds may be Inrolled, and Recoveries may be passed, Wills proved, and Replevins, Writs of Error and of Right, Patent Writs of Wast, of Partition, and of Dower may as for matters within the City and Liberties be determined.

To inroll a Deed, the Parties sealing must be before the Lord Mayor, Recorder and one Alderman, and make their acknowledgment that it is their Act and Deed, and if there be a Wife party, they will Examine her if she does it freely and without compulsion of her Husband, &c. and upon such acknowledgment, the Lord Mayor and Alderman set their hands as a Testimony thereof, for which 4 *d.* to each, and to the Attorney for the Indorsement 2 *s.* then must the said Deed be put into the hands of the Clerk of the Inrolments, who the next *Hustings* day will cause Proclamation to be made, to know if any one can gain-say why it should not be inrolled, and then he will proceed to inroll.

inroll the same; and a Deed here inroll'd is held as effectual as a Fine at Common-law, for as much as it Bars a Wife for making claim to her Dowry.

In case you are here to prove a Will, the witnesses to it must at some Court of *Hustings* held, take their Oaths, and if their Evidence be clear and full, then will the Clerk of the Inrolments enter it upon Record, which is the best way as to the proving of Wills relating to Estates in *London*.

If you are to pass a Recovery first, a Writ of right Patent must be obtained from the Curfitor of *London*, and given to one of the Attorneys of this Court, who are also Attorneys in the Mayor's Court, who thereupon will prepare the Record and procure the Recovery to pass; and it is practicable to have a Deed sealed, that it may be a sufficient leading to the uses of the Recovery, and to cause the said Deed to be inroll'd; where it so happens that the Vouchers cannot attend the Court; in this case signing a Warrant of Attorney, they may acknowledge it before Mr. *Recorder*, and that will be allowed as effectual as if they had been personally attending.

When Goods are to be replevied in *London*, the party must apply himself to the Clerk of the Papers belonging to one of the Compters, and exhibit to him the particulars, as also such security as is requisite to make restitution of the said Goods, if it shall appear upon Tryal the said Goods did not appertain to him; and then a Warrant will be made out by the Clerk to one of the Sheriff's Officers, to cause the Goods to be appraised, and to deliver them to the Plaintiff, and then must the Officer make return thereof to the Clerk of the Papers, who thereupon will immediately certify the Record into this Court, where it must be decided; and if issue shall be joyned to determine in whom

whom the property of the Goods was when they were taken. To try this issue, a Jury must be summoned, in order to which Precepts are to be issued to the Beadles of the six adjacent Wards, to return the names of six Inhabitants, substantial Freeholders in each Ward; and upon the return of their names, a Precept must be directed to the Sheriffs, to require them to summons the Jury to appear to try the issue at the next *Hustings* of Common-pleas.

In this Court a Writ of Error may be brought to reverse any Judgment in the Sheriff's Court, which must be made by the Cursitor of *London*, and directed to the Lord Mayor and Sheriffs of *London*, and when sealed, you must get Mr. Town Clerk to allow it, and enter at the same time into Bond with two sufficient Sureties to pay the Debt, or Damages, or Costs recovered, if so it be that Judgment should happen to be affirmed, as to what shall then be assessed; or in case the Plaintiff in the Writ of Error should not prosecute it with effect, and when such sufficient security is given, he will direct a *Superfedeas* to the Sheriffs to stay the further Proceedings upon the Judgment obtained, and then it is usual the next Court of *Hustings* of Common Pleas, after the Writ is allowed, to move, that within 14 days then following, the Proceedings in the Sheriff's Court may be certified into this Court, where the Errors may be Assigned and Argued; and then if Judgment shall be affirmed, the Plaintiff in the said Writ of Error may bring another Writ of Error before the Judges to examine the former Judgment.

When any time Judgment is affirmed in this Court for the Plaintiff, the Bond upon Motion will be delivered up to the said Defendant in the Writ of Error, to put it in suit for his costs, and such

damage as he has sustained by reason of the delay of Execution, nor can he be compelled to cancel or deliver it up till he is fully satisfied.

☞ Note that if the Plaintiff in the Writ of Error do fail to certify the Record out of the Sheriff's Court, pursuant to the time given by this Court; or if he shall not assign Errors, then this Court will give Judgment against the Plaintiff, and direct a Warrant to the Sheriffs of *London* in the nature of a *Procedendo*, giving them power to proceed to Execution upon the Judgment obtained in that Court.

And further Note, That by the command of the Lord Mayor, all Processes out of this Court are to be executed; however, the original Writ is directed to the Mayor and Sheriffs conjunct.

In Writs of Right, there is this Process by custom of the City, *viz.* the Tenants are to have at three several *Hustings*, three Summons, and three *Essoignes*, and after the Sheriff has returned all the Summons, three *Essoignes* are allowed, and then if desired a view will be allow'd.

In this Court are all the great Officers of the City elected at the usual times by the Liverymen; as also Burgeses to sit in Parliament as Members of the House of Commons for the City.

C H A P. XI.

Of the Lord Mayor's Court in matters of Proceedings, as they are Relating to Common-law or equity.

THe Court holden before the Lord Mayor, &c. of *London*, commonly call'd the Mayors Court, is a Court of Record, in which there is both Law and Equity; for there is proceeding at Law by Action of Arrest of the Body, or else by Attachment of the Defendant's Goods, and the proceedings in that case are much like the proceedings at Common-law.

There is likewise a Court of Chancery or Equity held before the Lord Mayor, where the proceedings are by *English* Bill and Answer, Replication and Rejoinder, much resembling the High Court of Chancery in proceedings.

This Court is held at the Chamber of the *Guild-Hall*, *Mondays* and *Tuesdays*, and as often as the Lord Mayor pleases to sit, though the Recorder of *London* sit as Judge by reason of his being learned in the Law; but the Lord Mayor and Aldermen may sit as Judges with him, if they please. This Court being held by Custom, and all the proceedings said to be before the Mayor and Aldermen.

To this Court are appertaining four Attorneys, who upon their Admission by the Court of Aldermen, take on Oath faithfully to discharge their Trust and Duties as Attornies in this Court, &c. And at the Office of this Court held at the *Royal Exchange* in *Cornhill*, must the Action or Actions be entered with one of the aforesaid Attornies, and the Actions are usually,

Actions

Actions of Debt, Actions of Trespafs, Actions of the Case, Account, Breach of Covenant, &c. Here are also Actions entered in debt at the suit of the Chamberlain of *London*, and in debt upon a Penal Statute, which the Attornies take care to enter as they ought to be; then must the party so entering his Action, give it or a Note thereof to one of the Serjeants at Mace belonging to this Court, there being six of them, though if the Defendant be Arrested and find not Bail, the Prison is one of the *Compters*, which imprisonment and the cause thereof is constantly Recorded in a publick Book, called the Book of Imprisonment by the Attorney who entered the Action; but if Bail be found, the eldest Attorney takes it, being Clerk of the Bails, and is to answer for it if he takes deficient Bail, and the Defendant does abscond: For if in such case the Plaintiff get Judgment for his Debt and Damages, he may have them of the Clerk of the Bails, if he petition the Court of Aldermen or our Recorder.

And here Actions entred, have advantage over those in the Sheriff's Courts; for as those entered in the *Compters* die in 16 weeks and may be crost, these remain for ever in force, tho' the charge of entering is no more than in the Sheriff's Office, viz. 1 s. 4 d.

And here I must Note for the honour of this Court in dispatching suits, that an Action commenced in this Court, may be brought to tryal in 14 days, and for a smaller charge; and an Action commenced in this Court cannot be removed into the Sheriff's Court, tho' an Action commenced in the Sheriff's Court may be removed into this, either by the Plaintiff or Defendant, so it be done before the Jury is sworn to try the Cause, as I shall more fully set down in the manner of it before I leave this Court.

But

But if there happen to be six weeks time between the putting in Bail to an Action in this Court, and the time of the Defendants Plea, the case then is, That the Defendant is barred from removing his Action or Suit into any other Court.

If any person not Free keep a Shop inwards or outwards within the City of *London*, or the Liberties thereof, for the sale of any Goods or Wares by retail, for every day, he so does, he forfeits 5*l.* and an Action lies against him for it in this Court, in the name of the Chamberlain of *London*, in pursuance of an Act of Common Council made in the Mayoralty of Sir *Leonard Holliday* Knight, grounded on the ancient Charters, Customs, Franchises and Liberties of the City of *London*, confirmed by several Acts of Parliament wherein you may see this more at large also.

If any man of *London* being a Freeman do employ a Foreigner to work within the City and Liberties, he forfeits the like Sum, and an Action lies against him pursuant to another Act of Common Council, made the first day of *August*, in the Third and Fourth year of the Reign of *Philip* and *Mary*, Sir *William Gerrard* being Mayor.

Of Attachments in this Court.

An Attachment here is to be entered in the Court as an Action, and is of force for ever, the Plaintiff being at liberty to proceed thereon when he will, and an Officer of this Court must be employed to make it; which Attachments are grounded on Actions of Debt, and in this Court Attachments for Money may be condemned in five daies, where there is no Opponent to delay proceedings; and if the Attachment be in the Plaintiffs own hands, it will be the less chargeable, or

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in any case more easie to the Plaintiff than elsewhere, and this great Advantage there is,

That if *A.* attaches the Goods or Moneys of *B.* in the hands of *C.* and it appears *C.* has no Goods or Moneys of *B.*'s in his hands at that time, or belonging to him when the Attachment is made; however, if it so fall out, that in six months ensuing the time of the Attachment *C.* shall become indebted to *B.* or have Goods in his hands belonging to *B.* then *A.* by virtue of the Attachment may recover the Moneys or Goods of *B.* which he shall prove to be in the hands of *C.* after the Attachment made; for the general Issues upon all Attachments, are whether *C.* who is styled the Garnishee had at the time of the Attachment, or any time since, any Goods or Moneys of *B.* in his hands.

The advantage of this Court is, That an Attachment cannot be removed out of it, nor tryed in any other Court; whereas an Attachment in the Sheriff's Court may be removed any time before the Tryal, by a Warrant signed by the Lord Mayor or Recorder, call'd *Levetur Querela*, which must be carried by one of the Officers belonging to this Court, and the Clerk of the Papers belonging to the *Compter*, where the Action was entered is to allow it, and must certifie the Action or Attachment.

If it happen that the Plaintiff in the Attachment obtain a Verdict or Judgment for Moneys or Goods, that are in the hands of the Garnishee, however he that is Defendant in the Attachment, has a privilege at any time, before the acknowledgment of satisfaction upon Record to put in Bail to the Action on which the Attachment is grounded, and so discharge the Judgment and Proceedings against the Garnishee, tho' the Garnishee be taken in Execution if the Money be not paid.

Again,

Again, if it be Goods that are attached then and he in whose hands the Attachment is made pleads he was not possessed at the time of the Attachment made, or at any time after of such Goods of the Defendants, then the Plaintiff must prove the Goods, or any part of them to be in his hands if he can; and hereupon such sufficient proof must find for the Plaintiff, and declare what Goods they find in the Garnishees Hands, upon which Judgment will be entered, and thereon a Precept made out to one of the Officers of this Court, in order to appraise the Goods so found; and if they are not produced by the Garnishee, he must return an *Elongavit*, which is to signify the Garnishee hath conveyed the Goods out of the Liberties of the City, and then the next Court-day for Tryal. After the return made, a Jury upon Oath must enquire of the value of the Goods found by the former Jury in the hands of the Garnishee, and thereupon Judgment will be entered as the value is found upon the Verdict of such Jury, tho' in the case of Attachments no costs will be allowed to either party, tho' the Verdict be for or against the Plaintiff.

As for the Plaintiff after he has obtained Judgment against the Garnishee, he must before Execution find Sureties to undertake for him, that in case the Defendant come within a year and a day into Court, to disprove or avoid the debt, that in such case the Plaintiff shall make restitution to the Defendant of the Moneys attach'd by him, and condemned in the hands of the Garnishee, or so much as shall be disproved, or upon default or failure in him, they will do it for him, and then Execution will be granted against the Garnishee for the moneys mentioned in the Judgment.

Now again, put the case that *B.* attaches moneys that is in the hands of *C.* as the moneys of *D.* and in reality *C.* hath no moneys in his hands that appertains to *D.* but is in expectation he may have moneys of *D.* in his hands in a little time to come, in such a case *B.* after four defaults, which usually may be in four days, may discharge the Attachment by personal coming into Court, and giving a Rule to declare upon the Attachment, and *B.* do not in three days after declare the Judgment will be entered against *B.* to discharge the Attachment, then immediately *C.* may plead he had no money in his hands at the time of the Attachment, or at any time since, and so put the Plaintiff upon the proof that he had any moneys in his hands, or otherwise *C.* may discharge the Attachment by waging his Law, nor shall the Garnishee give Evidence of Moneys if any such do come to the Garnishee's hand after the time of the Plea.

How to wage Law to an Attachment.

He who is the Garnishee, in whose hands the Money is suggested to be, must make his personal appearance in the Court, and there take this Oath, viz.

You shall swear that at the time of the Attachment made which was the . . . day of . . . last past, between the hours of Eleven and Twelve in the Forenoon of the same day, or at any time since you had not owed, nor did detain, nor yet have owed nor do detain from B. in the Bill original and Attachment aforesaid the Defendant named any part thereof the said sum of . . . so as aforesaid, nor any penny thereof in manner and form as the Plaintiff by his Bill original and Attachment aforesaid hath proposed.

So God you help.

How-

However, notwithstanding this, if the Plaintiff produces two Witnesses that will make Oath there was money in the hands of the Garnishee, when the Attachment was made, he must in such case cause the Depositions to be taken by the Town-Clerk or his Deputy, and so may he stop the Garnishee from waging his Law, and compell him to plead to the contrary if his Depositions are full and sufficient.

Again, suppose *B.* were indebted to *C.* in a certain sum of Money by Bill or Note, payable at a certain time to come, perhaps Nine Months, here an Action cannot be entered against *B.* till such time as the Money becomes due; but if *C.* be indebted to *D.* in such like or any other sum of Money, then may *D.* as soon as he knows the Note is given to *C.* by *B.* make an Attachment in the hands of *B.* as the Money of *C.* and here if *B.* appear, he shall be compelled to give Bail two days from his appearance to have his body forth coming, or to pay such Moneys as shall be found in his hands, and till and untill *B.* hath given Bail, he will not be admitted to appear to the Attachment, and upon neglect or refusal so to do, Judgment will be entered against him upon the Attachment, but if in case after *B.* he must plead, it is true he hath in his hands such Moneys, but that it is not payable to *C.* the Defendant till a certain time yet to come, and upon this *D.* the Plaintiff will presently have Judgment against *B.* the Garnishee for the Moneys attached, but then the Award of Execution will be stayed while it becomes due, according to the time mentioned in the Plea.

Where a Man is bound to deliver Corn at such a Wharf the day certain, as also the value by an Obligation, there by the custom of *London*, the creditor cannot before the day attach it in his hands,

hands, for the Corn is not the duty of the Obligation, for a man cannot be Attached by a thing wherein he hath no propriety at the time of the Attachment, and the party hath not propriety in the Corn till after the day without the delivery of it, for if he pleases to accept another thing for it, it is good.

If a party buy Goods for time by a verbal agreement, and the time of payment not being come, an Attachment shall be made, then the Garnishee in whose hands the Attachment of the Moneys is made, may plead the same plea as before, and shall not be compelled to pay the Money till it becomes due by Agreement, but the Plaintiff shall immediately have Judgment.

And be it supposed, that the Defendant in an Attachment after satisfaction acknowledged upon Record, shall bring his Action against the Garnishee for his Money so attached, the Garnishee may plead the general Issue, and so give the Attachment in Evidence, but at the same time he must prove the Debt to be a just one, for which the Money was condemned, and the Courts above have ever allowed it as a good Evidence against the Plaintiff in the Action.

In this Court Goods or Merchandice may be sequestered in the House or Warehouse of a person that absconds, there being no person therein, and condemned upon due appraisement to the use of the Plaintiff; of which see more at large in the proceedings of the Sheriff's Court, the manner being much the same.

This Court is also a Court of Equity, in the nature of Chancery for matters within *London*, and the Liberties thereof, and the Recorder usually sits as Judge or Chancellour for determining thereof.

To Exhibit a Bill in this Court when it is drawn in form as the case requires, it must be signed by one of the four City Council, whose Fee is 6 s. 8d., then Engrossed and Entered in Court, whereupon the Defendant must be summoned by an Officer belonging to this Court within the Liberties of *London*, to appear and answer to the Bill, otherwise he is not obliged to appear.

If an Action be depending in this Court, and the party Defendant has no way to be relieved but in Equity, in such case he has liberty to exhibit his Bill against the Plaintiff in the Action, which entered in Court, is equal to an Injunction, for staying the Plaintiff's proceedings at Law, without any motion till such time as the Plaintiff shall put in his answer.

And here take notice, That in case the Bill be to be relieved against an Action at Law, the Plaintiff in the Bill is not compellable to give the Plaintiff at Law any Summons to make his answer to the Bill; but in case Affidavit be made that the Plaintiff at Law was a great distance from *London*, as 100 Miles, or the like, when such Bill was exhibited, then upon motion to the Court he may proceed to Tryal notwithstanding the Bill; however Judgment and Execution is to be stayed till the Plaintiff at Law answer the Bill, or that the Court shall make an order to the Contrary.

If an Action shall be commenced in the Sheriff's Court, the Defendant must obtain the removal of it into this Court, before he can be capacitated to stay the Plaintiff's proceedings at Law by exhibiting a Bill as aforesaid, and if the Plaintiff at Law answer the Bill, then may the Plaintiff in Equity in eight days after put in his Exceptions to the answer, but it appears that the answer is full, and the Plaintiff in Equity is unable to make proof of
the

the matter suggested in his Bill, then may the Plaintiff at Law recover his costs against the Plaintiff in Equity.

And here by the way it is Noted, That where a Bill is exhibited, and no Action at Law depending, there are eight Court days allowed to the Defendant for making his answer to the Bill after his appearance, and if in that time no answer be made, the Plaintiff in Equity may have an Attachment against him, and the charge thereof the Defendant must pay when he gives in his answer, which is 5 s.

The answer being put in, the Plaintiff may reply general or special, and examine Witnesses for the proof of the Equity of his Bill, and may bring his cause to a hearing within a Month after Replication, and in this case the Town-Clerk is appointed to hear and examine Witnesses on either part.

After a Decree made, the Plaintiff is to serve the Defendant with a Copy thereof personally, and make Affidavit thereof before he can obtain an Attachment against the Defendant, and the Plaintiff may serve the Defendant with a Copy of the Decree in any place out of the Liberties of London, as well as within it; and out of this Court a Bill may be removed into the High Court of Chancery at any time before Publication is passed. But after (by the way Note) the cause will not be retained by the High Court of Chancery.

And to remove a Bill, take the following method: First the Bill must be filed by the Defendant in the High Court of Chancery, against the Plaintiff in this Court, after that, he must give Bond at the Register Office to prove the Suggestions in his Bill within Fourteen days, and procure a Certificate that the Bill is filed and securely put in; so petition the Lord Keeper for to grant a *Certiorari* to

to remove the Bill out of this Court, and the Petition being answered by his Lordship, then will *Certiorari* be made by the Clerk in Chancery which must be given to the Town-Clerk, and he will thereupon allow it; and after this the Attorney for the Defendant in this Court will certify the Bill, and proceed into the High Court of Chancery.

Where Exceptions are put in to an answer in this Court, and there be a cause at Law depending between the parties, there the Plaintiff in Equity must move the next Court for a day to argue such Exceptions, or in course they will be over-ruled.

If the Plaintiff's Bill be demurr'd or pleaded to by the Defendant in Equity, he must the next Court-day after such Demurrer or Plea is entered move for an order to argue such Demurrer or Plea, in neglecting to do which the same will be of course over-ruled, and the Defendant constrained to give an answer.

In this Court the Apprentice of a Freeman discharged legally from his Master, may exhibit a Bill to recover part of the Money his Master received with him as an Apprentice, but if he has served five years or very near that time, there must be extraordinary cause if the Court relieves him in ordering any Money back again.

In this Court there is relief for the Widow of a Freeman to recover her customary part of her Husband's Estate, by putting in a Bill, setting forth her cause of plaint, but where the Executors do not inhabit within the Liberties of London, she must seek her relief in the High Court of Chancery.

If somewhat to lessen his Charges, the Plaintiff be advised not to examine any Witnesses, he may go to a hearing upon the Bill and answer within fourteen days after answer. Any

Any person living without the Liberties of London, who shall exhibit a Bill in this Court, the said person upon motion made, will be ordered by the Court to give security by Bond to pay the costs of the Defendant; if it so be that the Bill be dismissed, or upon failure so to do, the Bill will be dismissed, and the Defendant will not be compelled by the Court to give any answer to the Bill till such time as security be given.

If in eight days after answer is given to a Bill in this Court, the Plaintiff give not in his Exceptions, the Court upon motion will give order, that the Bill be dismissed, unless the Plaintiff do reply in a weeks time, for which order 6 d. is the Fee; and upon the Bills happening to be dismissed for the drawing up such Dismission, the Fee is 6 s. 8 d. which the Defendant will have allowed him in the Costs.

And now having been somewhat long in this Court, as being the most useful and necessary of all the lower Courts, and greatly easie and advantageous to the Citizens and such others, as may be concerned in it: I close with the Form and beginning of a Bill, and what relates to Masters and Apprentices as they concern this Court.

The Form or beginning of a Bill, &c.

TO the Right Honourable Sir W. G. Kt. Lord Mayor of the City of London, and his Right-worshipful Brethren the Aldermen of the same City; In all Humility, sheweth to your Lordship and Worshipships your daily Orator, &c.

The Conclusion thus:

May it therefore please your Lordship and Worshipships,
out of your accustomed Goodness, to cause the said

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C. D.

C. D. and E. G. to be warned by one of your Lordship and Worships Serjeants at Mace, and Ministers of this Honourable Court, personally to be and appear in the said Court at a day certain, to be by your Lordship and Worships to them thereunto prefixed, then and there to make Answer unto all and singular the Premises upon their Corporal Oaths, and that they may be enjoined to stand unto, to perform and abide such Order and Decree in the Premises, as to your Lordship and Worships, upon bearing the cause shall seem meet.

As for Apprentices, they being the supply of this City, by growing up in time to be Eminent Traders, the City has take great care of them whilst Apprentices, as will appear in the next Section.

C H A P. XII.

Of Masters and Apprentices.

AS to what relates to Masters and Apprentices in this great City, it is necessary neither of them should be ignorant; wherefore I shall briefly set down what may be necessary in this affair, *viz.*

By the custom of *London*, such Youths as shall be bound Apprentice, being above the Age of 14 years, to a Freeman of *London*, for the term of Seven years, are obliged to serve their full time, and an Action will lie against the said Apprentice for the Breach of any of the Covenants; but if under that Age it is looked on as an undue binding, and the Indenture is not held Good.

Every Master according to the laudable custom of the City, ought to inroll his Apprentice with-
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in a year after Binding, before the Chamberlain in his Office at *Guild-Hall*; for in defect of this, the Apprentice may discharge himself from his Master by suing out his Indenture.

But suppose the Apprentice refuses to be inroll'd within the time mentioned, then within that time may the Master carry the Indenture to the Chamberlain or his Clark who will Record the same; which Record will serve as well as an Inrollment, though the cause of not inrolling is the willful neglect of many Masters, though in this they answer, not the Oath they took when made Freemen, for doubtless some conclude, if an Apprentice goes away, another may be had with Money; others, that if an Apprentice should prove a Thief, Gamester or Lewd Person, he is bound to keep him when inrolled, but may discharge himself of him at pleasure if he be not, which is a gross mistake; for if the Apprentice be not inrolled, and the Master turns him away, the Apprentice in such case, may bring his Action upon the Covenants of his Indenture, and recover Damages from time to time against the Master; and if he be inroll'd and turn'd away, the case is but the same, and by the same Rule he must take his remedy. But for want of Inrollment, many times the Apprentice grows negligent or extravagant, as knowing if his Master uses means to restrain him, and he is disgusted thereat, he can easily quit his Service, which makes him less regard his Master or his Service than he would, otherwise if he knew he could not be loosed from him.

Yet in some cases, though an Apprentice be inrolled, he may be discharged from his Master; yet these cases are not ordinary ones, but such as there is found a necessity they should part, *viz.* Extraordinary and unmerciful beating, in which there

may be danger of Life or Maim, without just cause or flight occasions, or that the Master deny him or refuse to find him sufficient Necessaries, as Meat and Drink, &c. or neglect to teach him his Trade himself, or by another, or that the Master himself understands not the Trade, leaves off his Trade, or turn his Apprentice out of Doors, these are causes that will be hearkened to, and according as the proof is he will be relieved.

To sue out an Indenture where there is no inrollment, the Apprentice must carry his Indenture, or a Copy of it to one of the Attorneys of the Mayor's Court, who will give a Note or Warrant to one of the Serjeants belonging to the Court, to give Notice to the Master, that his Apprentice is minded to sue out his Indenture, and for what cause; and four Court-days after will leave a Summons in Writing at the Master's House for him, to appear in the Mayor's Court, and shew cause why the Apprentice should not be discharged, and if it be for not Inrollment, the Master may appear and put it off for some short time, but cannot hinder his being discharged; but if for any other cause, the Master may appear by an Attorney of the Court, and plead and try the Validity, or Truth of the matter complained of or alleged by the Apprentice, so that there will be a fair hearing by Jury to determine it, who are men of Integrity, knowing in the Affairs of the City; but let the Verdict be for which of them soever, they must bear each of them their own Charge, for no Costs will be allowed to either party, nor can an Apprentice sue out an Indenture against a Freeman any where but in this Court. Now some are of Opinion, that if they are bound for above seven years, as eight or nine though inroll'd, they may nevertheless at the end of seven years be quit and

and have their Freedom; but in this they mistake, for the Covenant of Indenture will hold them to serve their full time therein Covenanted, unless some very reasonable cause appears why they should be discharged.

If a Freeman's Widow take a Maid to be her Apprentice, she may inroll her as a Youth may be inrolled, if above 14 years of Age; but if the Indenture be made for under seven years, it is not binding, but is against the custom of *London*, and will not oblige the apprentice.

If a Woman, the Wife of a Freeman, take a Maid apprentice to *Sempstry* or the like, she cannot be bound to her, but it must be to her Husband, and not for less than seven years, and may be inrolled, and at the Expiration of the term made free, in case she so long continues unmarried.

If any Apprentice having duly served the term of his Indenture, though his Master refuses to make him Free, he may compell him to it by Summoning him before the Court of Aldermen, or Chamberlain of *London*, who will examine the Case, and require the Master to shew cause why he declines, delays or refuses so to do; and if he can shew no good or warrantable cause to the contrary, he will make him Free.

C H A P. XIII.

*Of the Chamberlain of London's Offices,
with the material Matters relating thereto.*

THE Chamberlain of *London* is an Officer of great Trust, Credit and Repute; his Office is kept in the Chamber of *Guild-Hall*, he is entrusted with the City-cash, and Orphans-money, and annually Elected, tho' usually the same person continues it for Life, giving very sufficient security to the Court of Aldermen, to pay and make good whatsoever Moneys shall be delivered to him; and once every year gives an Account to the Auditors chosen and appointed to that end, and is entrusted with the City-leases, and all Bonds and Securities taken by the Court of Aldermen for Orphans-moneys, and usually every Forenoon attends in *Guild-Hall* to turn over Apprentices, Inroll and make Free such as have served the term of Seven Years, according to the term of their Indenture, and have not taken Wages or contracted Matrimony in that time. And the Apprentices of *London* are under his care in a very great respect; for if an Apprentice shall commit any notorious fault, and unrulily behave himself in his Master's House, or towards his Master, upon complaint made to him, he will send one or more of his Officers for such Apprentice, and punish him as he sees fit, according to the nature of the offence.

If the Master misuse his Apprentice by being cruel to him, beat him with unlawful Weapons, neglect to instruct him in his Trade, or to find him such necessities as he ought, upon complaint made,

made, he will send for or summons the Master, and upon hearing both parties, will relieve the Apprentice as he sees convenient, or leave him to take his remedy against his Master in the Lord Mayor's Court.

If any Freeman be duly Summon'd, and shall decline or refuse to appear before the Lord Mayor or Recorder upon Complaint made, he will grant a Warrant to apprehend such person, and force him to appear.

In turning over an Apprentice, the Master consenting, he must first be turned over before the Company, before which he was bound, and then before the Chamberlain.

☞ Here Note, That if the Apprentice be turned over by the Company only, it is no obligation upon the second Master to keep such Apprentice longer than he pleases, nor is the Apprentice thereby compelled to serve such second Master, but may depart at his pleasure by suing out his Indenture against his first Master, which may be done without the privity or knowledge of the second Master ; but if he is turned over before the Chamberlain, the first Master is discharged from him, and the second Master is obliged to retain him as his Servant, with whom he must serve the remaining time of his Indenture, and it is the Interest and Advantage of every Master and Apprentice, when any difference happens between them, that they cannot or will not reconcile between themselves, to refer it to the Chamberlain, who will freely hear both Parties, and decide the controversy, and so prevent much strife or expence elsewhere.

If an Apprentice shall neglect to take up his Freedom in a convenient time after his Indenture is expired, the Chamberlain may set such a Fine

upon him as he shall think fit for such his Omiffion.

If a Youth be bound by a Freeman, and privately turned over to a Foreigner, and he lets him serve the Foreigner for gain or any design, and yet comes to make him Free, testifying he served a Freeman, in such case upon discovery or proof of the deceit, both the Master may be disfranchised, and the Apprentice barr'd of his expected Freedom; or if he get it, and this be afterward discovered, he may be disfranchised; or if a Freeman testify his Apprentice has served the due time of his Indenture, and he has not done it, both of them may be disfranchised for testifying an untruth to impose on the City, and being contrary to the Oath of a Freeman, which Oath for their better Information, I shall here recite.

The Oath of a Freeman of London.

YE shall Swear that ye shall be Good and True to our Sovereign Lady Queen Anne, and to the Heirs of our said Sovereign Lady the Queen; obeysant and obedient ye shall be to the Mayor and Ministers of this City, the Franchises and Customs thereof ye shall maintain, and this City keep harmless in that that in you is. Ye shall be contributory to all manner of Charges within this City, as Summons, Watches, Contributions, Taxes, Tallages, Lot and Scot, and to all other Charges bearing your part as a Freeman ought to do. Ye shall colour no Foreign Goods under or in your Name, whereby the Queen, or this City may or might lose their Customs or Advantages. Ye shall know no Foreigner to buy or sell any Merchandice with any other Foreigner within this City or Franchise thereof, but ye shall warn the Chamberlain thereof or some Minister of the Chamber. Ye shall implead or
sue

ſue no Freeman out of this City, whilſt ye may have Right and Law within the ſame City. Ye ſhall take no Apprentice, but if he be Free-born (that is to ſay) no Bondman's Son, nor the Child of any Alien, and for no leſs term, than for ſeven years without Fraud or Deceit; and within the firſt year ye ſhall cauſe him to be inrolled, or elſe pay ſuch fine as ſhall be reaſonably impoſed upon you for omitting the ſame, and after his Term is ended within convenient time (being required) ye ſhall make him Free of this City, if he have well and truly ſerved you. Ye ſhall alſo keep the Queens Peace in your own perſon, ye ſhall know no Gatherings, Conventicles nor Conſpiracies made againſt the Queens Peace, but ye ſhall warn the Mayor thereof, or let it to your power: All theſe Points and Articles ye ſhall well and truly keep, according to the Laws and Cuſtoms of this City to your power.

So help your God.

C H A P. XIV.

Of the Court of Requests, commonly called, the Court of Conſcience, held at the Guild-Hall in London; the proceedings therein, &c.

TH E Court of Requests is of ſo good a uſe for preventing Vexatious Suits at Law for ſmall Debts, and recovering them with a very ſmall Charge within the City and Liberties of London; that it could be wiſhed, eſpecially for the ſake of the Poor, that all Cities and Corporations, nay the whole Kingdom could enjoy the like Privilege,

which would prevent the ruin of many Families, and greatly lessen those swarms of Locusts that prey upon the necessitous people, who get their bread by the sweat of their Brows.

Touching the beginning of this Court, it is Recorded, That on the first of *February*, in the Ninth Year of the Reign of *Henry VIII.* an Act of Common Council was made, That the Lord Mayor and Court of Aldermen, for the time being, should monthly Assign two Aldermen, and four discreet Commoners to be Commissioners to sit in the said Court of Requests, on *Wednesdays* and *Saturdays*, and to hear and determine all Matters and Complaints brought before them, between party and party, being Citizens and Freemen, where the Debt or Damages did not exceed 40 s. And this Act continued for two years, and being found charitable and useful, the same Act has since been continued by divers other Acts of Common Council, and its Authority continued to the end of the Reign of *Queen Elizabeth*; but then many repining at, and envying the Authority of this Court, and suing poor people in the superior Courts of *Westminster*, being Citizens and Freemen, or carried their causes elsewhere out of the Court of Requests; it was found necessary that for the better strengthening and establishing the said Court, an Act of Parliament should be made, which was made in the first year of the Reign of *King James I. viz.* That every Citizen and Freeman of *London*, that had any debts owing to him under 40 s. by any Debtor-freeman of *London*, inhabiting in *London*, or the Liberties thereof, should or might cause such Debtors to be warned to appear before the Commissioners, or the greater number of them who were impowered from time to time to set down such orders between Plaintiff and

and Defendant, Debtor and Creditor, touching such Debts not exceeding 40 s. as they should find to stand with Equity and Good Conscience. But as nothing can be done for a publick good, without the Envy of some, so in this again many struggled to avoid the Jurisdiction of this Court, pretending I know not what deficiency in the meaning of words in the Act, when to set all right beyond contradiction, and to give this Court full and ample power to hear and determine; and for the prevention of all Cavils and Controversies, it was strengthened and established by another Act of Parliament, made the third year of the Reign of King *James I.* whereby the authority of the said Commissioners was much enlarged, *viz.* That every Citizen and Freeman of *London*, and every other Person and Persons inhabiting within the City or Liberties thereof (being a Tradesman, Victualer or Labouring-man) which have or shall have any debts owing to them, not amounting to the sum of 40 s. by any Citizen or Freeman (or by any other Person or Persons, being Tradesmen, Victuallers or Labouring-men) inhabiting within the said City or the Liberties thereof, should or might cause such Debtors to be warned to appear before the said Commissioners of the said Court of Requests; and the said Commissioners, or any three or more of them, shall have power to set down such orders between Plaintiff and Defendant, Creditor and Debtor, touching such Debts as amount not to 40 s. as they shall find to stand with Equity and good Conscience.

And also the said Commissioners, or any three or more of them have power by the said Act. to Administer an Oath to the Creditor or Debtor, and to such Witnesses as shall be produced on either part; and also to commit to Prison in one

of

of the Compters such Creditor or Debtor as shall not appear upon Lawful Summons, or not perform such order as the said Commissioners, or any three or more of them shall set down.

In the close of this Act, there is a *Proviso* which I shall recite *Verbatim*, for the better rectifying some mistakes in the more ignorant sort of ple, *viz.*

Provided always that this Act or any thing therein contained, shall not extend to any Debt for any Rent upon any Lease of Lands or Tenements, or any other real Contracts, nor to any other Debt that shall arise by reason of any cause concerning a Testament or Matrimony, or any thing concerning or properly belonging to the Ecclesiastical Court, albeit, the same shall be under 40 s. any thing before contained to the contrary in any wise notwithstanding.

As to this Court, the Lord Mayor and Court of Aldermen, do monthly assign such Aldermen and Commons to sit as Commissioners as they think fit, and they or any three of them make a Court sitting in *Guild-Hall*, *Wednesdays* and *Saturdays* in the Forenoon, to hear and determine such causes and things as come before them; and here a cause brought may be determined for a very small charge, as sometimes 10 d. *viz.* 6 d. for the Plaint and Summons, and 4 d. for the Order; but if the Defendant neglect or refuse to appear the second Court-day after the Summons delivered, an Attachment will go against him, which will compel the party so summon'd to appear and heighten the charge.

The power of this Court is, that if any Citizen shall be Arrested for a Debt under 40 s. the Court upon complaint thereof made, will grant a Summons for the Plaintiff in the Action; and if he appear not the

the next Court-day, after the Summons left at his house, an Attachment will be granted and compel him to appear, and then the Debt appearing no more than what is in the Jurisdiction of this Court, he will be forced to take his Debt and pay the Defendant his Costs; and if any Attorney in *London* presume to proceed in any such Suit after notice to the contrary given, or shall refuse to obey the order of this Court upon complaint thereof made to the Court of Aldermen, they will suspend such Attorney from Practising as an Attorney in any of the Courts of *London*, as it was done by one *Thomas Hutton* an Attorney in the Sheriff's Court, on the 24th. of *January*, *An. 1610.* in the eighth year of King *James I.* *Craven* then Mayor; for upon his Contempt, the Commissioners did complain, and an Order was made by the Court of Aldermen, that *Dale* one of the Judges of the Sheriff's Court then being, should take notice thereof, publish it in the Sheriff's Court, and take private order that the said *T. Hutton* should not any more be admitted to practice in the Sheriff's Court.

The Commissioners of this Court where the Debt is given, and the Defendant pleads poverty, which so appears to them to give him time to pay the Debt by several Payments as they shall think fit to Order; and if he be punctual in them, he shall not be any further troubled or molested.

C H A P. XV.

Of the Court of Common Council in London.

THis Court resembling the nature of a Parliament in the City, is held at the *Guild-Hall* before the Lord Mayor, Aldermen and Common Councilmen of this City of *London*, when the Lord Mayor shall think fit to appoint and direct it; it being in his Lordships power to call and dismiss this Court at pleasure.

And for the well Government and ordering affairs of the City, several Committees are yearly elected and appointed by this Court, for the more speedy and better dispatch of the City's affairs, who having consulted for the well Management, make their Reports to this Court of their doings and proceedings, as they have found done, or as occasion requires, *viz.*

1. A Committee of six Aldermen and twelve Commoners, for letting and demising the City Lands and Tenements, who usually meet every *Wednesday* in the Afternoon to that purpose in the *Guild-hall* of *London*.

2. A Committee of four Aldermen and eight Commoners, to let and dispose of the Lands and Tenements given by *Sir Thomas Gresham*, who have usually met at *Mercers-Hall*, at such times as the Lord Mayor for the time being appoints and directs, it being the custom to Elect the Lord Mayor one of this Committee.

3. This

3. This Court yearly Elects Commissioners for the Sewers, &c. as also a Governour, Deputy Governour and Assistant, for the well Management of the City Lands in *Ulster in Ireland*, pursuant to the King's Charter granted to that end.

A stranger born may be made Free of the City by this Court, and the several places of Common Serjeant, Town Clerk, and Common Cryer with some others are in the gift of this Court.

They have power to make Acts, called Acts of Common Council, and Orders for the well Regulating and Government of the City and Liberties which are of force and binding to the Citizens, who are obliged to comply with them, and many other great Privileges and Advantages attend this Honourable Court.

C H A P XVI.

Of the Court of Aldermen in the Guild-Hall of the City of London.

THIS Court is of great Antiquity and Grandure, being a Court of Record held by the Lord Mayor and Aldermen in the Inner Chamber at *Guild-Hall*, every *Tuesday* and *Thursday*, except Holy days, and in the time of Sessions of Gaol delivery, and the most considerable places of Trust and Profit are,

In this Court Cognizance is taken of all matters relating to Lights, Water-courses and Party-walls, which may here be determined; also the Assize of Bread, price of is appointed by this Court, and all Bonds and Leases that pass under the City Seal must be sealed in this Court.

If

If any Officer belonging to the City shall be Disorderly, or any Misbehave himself in his Office, upon complaint made to this Honourable Court, and due proof of the Fact of such Offender, he may be and is usually suspended from the profits of his Place or Office during the pleasure of this Court.

By this Court the Rulers of the Company of Water-men are yearly chosen pursuant to an Act of Parliament, made the second and third year of *Philip* and *Mary*; and their Rates were signed and agreed upon by the Privy Council, Lord Mayor and Court of Aldermen, to be taken by Water-men.

The Lord Mayor for the time being, may cause any person inhabiting the City of *London* or the Liberties thereof, to be Summon'd to appear before him, upon the complaint of any Citizen; and if he appear not, he may direct his Warrant to bring him before him by a Constable, and hath Power to hear and determine Differences between party and party.

If any person be clandestinely carry'd on Ship-board, or there detained by such means against his will, not bound as a Servant, my Lord Mayor may send his Warrant by the Water-bailiff to compell any Commander of any Ship or Vessel to release the person.

Upon the humble Request of any Citizen of *London*, that Trades or keeps Fairs in any part of *England*, the Lord Mayor usually grants his Warrant to certifie such a Citizen is Toll-free.

If Foreigners refuse to pay the duty of Baliage for Wares and Merchandice brought to the City of *London* Westward, the Lord Mayor may grant his Warrant to make distress of the Goods of the said Foreigner; he may also grant his Warrant
against

against Hawkers, with Flesh-meat within the City and Liberties; and also a Warrant pursuant to an Act of Common Council, Intituled, *An Act for the settlement and well ordering the severall publick Markets within the City of London, upon the complaint of any Abuses, or for enquiring into them.*

Pursuant to an Act of Parliament made in the 22 d. and 23 d. year of King Charles II. It is ordained and Enacted, that the Annual certain Tythes ascertained of all and every Parish and Parishes within the City of London and Liberties thereof, whose Churches have been demolished by the dreadful Fire, and which said Parishes by vertue of an Act, 22 Car. 2. Chap. 11. Intituled, *An additional Act for rebuilding the City of London, uniting the Parishes, &c. or remain and continue single.* The Lord Mayor is impowered upon complaint made to him by any Minister, against any Parishioner on this occasion, for refusing to pay the rate Assessed, to cause the Parishioner to be Summon'd to appear before his Lordship; and if he refuse to appear, or to pay the Money assessed, which respective Sum so assessed, shall be taken as Tythes, and shall be esteemed and deemed, and taken so to all intents and purposes, as in the Act is at large expressed. Then his Lordship upon the Oath made by the Clamant of the demand thereof, will grant his Warrant to distrain the Goods of such refuser.

The Lord Mayor may at his Discretion grant a Warrant under his Hand and Seal, to examine and try Weights and Measures, and rectifie the abuses therein, and punish Offenders in this Kind.

The Lord Mayor and Aldermen, as they see cause, may punish all Constables and others that shall neglect the Watch, pursuant to an Act of Common Council, made in the Mayoralty of Sir John Robinson, Intituled, *An Act for the better ordering*

ordering the Night-watches within the City of London and the Liberties thereof.

The Lord Mayor annually issues out his Precept to the Aldermen of every Ward, to hold his Wardmote for the Election of Common Councilmen and other Officers.

C H A P. XVII.

Of the Court of the Conservator of the Water, and River of Thames.

THE Lord Mayor of *London* is Conservator of the River of *Thames*, and Waters of *Medway*, &c. and there is a Court held before his Lordship at the times he shall direct and appoint, in the respective Countrys next adjoyning to the Cities of *London* and *Westminster*, and the Water-bailiff is his Deputy, who ought to give notice to his Lordship of what Offences he finds committed, or that come to his knowledge by any party or parties contrary to the orders made for the preservation of the Brood, or Fry of Fish in the said River, &c. For which, and to hinder abuses of Fishermen in undue Fishing, or with unlawful Nets, or taking unsized Fish, or out of Season, several Orders have been made and devised to be Obeyed by Fishermen and others, under the pains and penalties contained and specified therein, as in the Mayoralty of Sir *Robert Ducie* and others. Also Articles are set down for the Jury of the River of *Thames* Eastward, to enquire upon relating to the Fishery, as they concern Trinkermen, Hebbermen, Trawler, Draggermen, Shadders, Retermen, Eel-leaps, Smelt-leaps, Eel-spearing, Fore-

restalling Fish out of Season, Soil and Rubbish, Royall Fish, Lampern Rods, and such like things tend to the conservation of the Fishery and the well ordering thereof, that the River may be kept from Nuisances, and the Fish multiply and encrease:

This great Honour and Advantage to the City of *London* is of ancient Grant, for I find it that the Mayor of the said City for the time being, and all other his Predecessors, Governours of the said City time out of mind, have had and exercised the Room of conservancy of the River of *Thames*, and the Punishment and Correction of all manner of Fishermen; and King *Edward III.* by his Charter granted, that the Citizens of *London* might move and take away all Kiddels in Water of the River of *Thames* and *Medway*. and shall have the punishment to the King thereof coming.

By a Statute of the 17 *Richard II.* it is Ordained and Enacted, That the Mayor of *London* for the time being, shall have the Conservancy of the River of *Thames*, and put in Execution the Statute of 13 *Edw. I.* and 13 *Rich. 2.* from the Bridge of *Stanes* to *London*, and from thence over the same Water, and in the water of the *Medway*; and King *James I.* by his Charter to the City, dated the 20th. of *August*, in the third year of his Reign, particularly takes notice of the Lord Mayor's Right to the Office of Bailiff and Conservation of the River of *Thames*; among other Expressions using these, viz.

That they have had, and ought and have accustomed to have, and take to their own proper use, by the Mayor of the aforesaid City [meaning *London*] for the time being, during the time of his Mayoralty, or his sufficient Deputies, all Wages Regards, Fees and Profits appertaining and belonging to the said Office of Bailiff.

And

And then the words go on, whereby he confirms to them all the Rights and Privileges formerly granted and enjoyed; so that this River on which thousands of Persons are daily imploy'd, brings a very great income to the City, by acknowledgments and duty; the like upon this occasion, the greatest River in the World not affording, nor so useful for shipping in bringing in such store of Merchandises as abound in *London*, and serve the greatest part of *England*, &c.

☞ Note in all Commissions touching the Water of *Lee*, the Lord Mayor of *London* shall be one, 3 *Fac. 1. cap. 14.*

C H A P. XVIII.

Of the Court of Orphans held before the Lord Mayor and Aldermen of the City of London, &c.

BY the custom of *London*, the Lord Mayor and Aldermen shall have the Orphans within the City, and they may commit the custody of such Orphans to other Guardians; and if any Orphan be taken away from any other man, to whose custody he is committed, he shall have a Writ of Ravishment.

This Court is held before the Mayor and Aldermen of this City of *London*, who are Guardians to the Children of all Freemen of *London*, who are or shall be under the Age of 21 years, and the common Serjeant is by them intrusted to take all Inventories and Accompts of Freemens Estate, and the Common Cryer is to summon all Executors and

and Administrators of Freemen, to make their appearance before the Court of Aldermen, to give in Inventories and Accompts of the personal Estate, &c. of the said Freeman : Of the death of which, Freemen so leaving their Children under Age, the Parish Clerks within the Bills of Mortality, ought to give an Account with the name of such Freemen, to the common Cryer of the City, who is thereupon to Summons the Widow or Executor to appear before the Court of Aldermen, to enter into Obligation, to bring in an Inventory ; to do which, a time is allowed by the Court for two Months, for preparing, bringing in, and exhibiting such Inventory.

The youngest Attorney in the Lord Mayor's Court, is Clerk of the Orphans, who takes all Securities for their Portions in the name of the Chamberlain of *London* for the time being, and by the custom if the security live out of the City, they are taken bound by Bond, but if within the City, they are only bound by Recognizance.

If any party be duly Summoned and appears, the Lord Mayor if he sees fit, may send his Warrant and force him or her to appear, and upon the refusal of such Executor to become bound, the Court of Aldermen may commit him or her to the Gaol of *Newgate*, there to remain till submission be made and security given ; nor will the Courts at *Westminster* relieve such person.

After such Bond or Recognizance given, four Freemen must appraise the Testator's Goods, and must take an Oath to make a true Appraisement before a Justice of Peace in *London*, viz. That the Appraisement they shall make of the deceased Goods, shall be a just and true valuation and appraisement of the same Goods and Chattels according to the best of their Judgment and Skill, for which

which Oath i. s. 4 d. is to be paid, and the common Cryer must have notice of the time when the Appraisement is, being the person appointed by the Court to be present at all such Appraisements, to see it is fairly and truly done to the advantage of the Orphans; for unless he or his Deputy be present, and the Inventory signed by him, it will not be allowed by the Court of Aldermen, and for signing his Fee is 10 s. and being signed by him and the Appraisers, it must be delivered to our common Serjeant, or one of his Clerks at his Office in *Guild-hall-yard*; and if he approve thereof, then will it be ingrossed, and a Duplicate thereof made for the Executor or Administrator. And when the same is examined by him, and he has set his hand to it, in witness thereof, the Executor or Administrator must swear in the Court of Aldermen, that the said Inventory is a true Inventory of the Goods and Chattels of the deceased party, according to the best of his knowledge.

After this is done, then it remains that the Executor or Administrator enter into Obligation with Penalty, to bring in the Money appearing due to the Orphans, by such an Inventory within two Months, or give good security within that time to pay the same into the Chamber of *London*, for the use of the Orphans when at Age or Married; but if the Executor think it not convenient to pay the Money into the Chamber, then must he be bound to the Chamberlain of *London* with three sufficient Sureties in one or more Recognizances, or otherwise by Bond, to pay the Money due to the Orphans. And here is to be Noted, That if the sum be 900 l. the Security must be bound in three Recognizances each for the payment of 300 l. the custom so allowing never to make

make any Recognizance relating to Orphans of greater penalty than 400 *l.* and not for the payment of above 300 *l.*

On *Monday* morning after *Midlent-Sunday*, the Lord Mayor and Aldermen sit in the Orphan's Court for no other cause but to hear the names of the Securities call'd over; and on that day, one of every one of the Securities should give their Attendance in Court, to give account of the rest whether living or in good Estate, whether the Orphans are Living and Married; but if on that day none of the Security appear, their Recognizances and Bonds are forfeited, and the Clerk of the Orphans in such case is to make out Process against the Security, to force them to give the account required, and pay the charge of the Process. And further, the security are to be careful that the Orphans under such their charge Marry not, nor be put out Apprentice without acquainting the Court of Aldermen with it and having their consent.

They are also to take care to bring them to the *Guild-Hall*, with a person to prove the Age of such Orphan, and then the said Orphan must make acknowledgment or satisfaction for the Money due to him or her of the Testator's Estate, which must be done in the Court of Aldermen; but Mr. Common Serjeant's Clerk must first draw up a Note in Mannor and Form to that purpose.

If there be Lands and Tenements that are left by a Freeman to his Orphan Children, then must the Executor with Sureties become bound to account for the Rents and Profits which shall arise thereby, till he shall be discharged of his trust; and when the Orphan is of full Age, and shall have acknowledged satisfaction in the Court of Aldermen, then upon motion made by our common

mon Serjeant, they constantly order all Bonds entered into for the payment of such Orphans Portion, or Moneys shall be rendred up and cancell'd, or if bound by Recognizance, the Clerk will cross and discharge it.

The Widow of every Freeman, if she shall be Executrix or Administratrix of her deceased Husband, according to the custom of the City, is fineable if she Marries again before she does exhibit a true Inventory of her Husband's Estate into this Court, and the Fine to be to the use of the Orphans.

If the Estate of a Freeman deceased, upon an Inventory exhibited, appears to be no more than will pay his just Debts, in such a case, the Executor or Administrator may be discharged of the Recognizance given without paying any Fee, which he gave for exhibiting such Inventory, if he bring in such an Inventory when our common Cryer shall give him notice so to do.

And for the better Security of Orphans, that they may not be drawn into unhappy Marriages; if any Person do intermarry with any Orphan without the consent of the Court, such party may be fined by the Court according to the Quality and Portion of the Orphan; and except that Fine be payed, or Bond given to pay it in reasonable time, the Court of Aldermen may commit him to *Newgate*, to remain in custody till he submit to their Order; and tho' he have a much greater Estate than the Orphan he Marries, it is the same thing, but if as the Court shall direct, he settle an Estate upon the Orphan, and make application by Petition to have the Fine remitted, then in probability the Court will extend their favour as has in some the like cases been done; and this custom has been adjudged reasonable, and was argued

gued in the Court of *Kings-Bench* in the case of a Merchant of a considerable Estate, who intermarried with an Orphan who had but 200 l. or some such sum in the Chamber of *London*, though in all, her Portion was 800 l. who for justifying himself in it, the Court amerced him 40 l. which he refusing to pay was committed to *Newgate*, and remaining there a considerable time, brought a *Habeas Corpus* which was allowed, and the cause of his Imprisonment returned. Upon perusal of which, after a long Debate and Council heard on both sides, the Court of *Kings-Bench* remanded him back to Prison, with Admonishment to submit himself to the Court of Aldermen, which he did, and paying the Fine was Discharged: But upon making farther Application and humble Suit, had part of it returned.

By the custom of *London*, the Widow of a Freeman may demand a third part of his personal Estate, his Debts and Funeral Charges paid, besides her Widows Chamber furnished; and the other third part his Children claim, and the remaining third he has power to give by Will to his Wife, Children or any other Person; but if he die without Children, then may the Widow require a Moiety of his Personal Estate, besides her Widows Chamber, debts being first paid; and if it happen a Freeman ignorant of the custom of *London*, make his Will contrary to it, his Wife and Children may be relieved against such a Will by exhibiting a Bill in this Court against the Executor of such Freeman, and such part of his Will as is not agreeable with the custom, will be declared void and of no effect.

If a Man not Free, or any other person bequeath a Legacy to any City Orphan, the Court of Aldermen have power to compell the Executor to

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pay the Money to the use of such Orphan, or give Bond to pay it according to the intent and meaning of the Donor, according to the tenor of his Will.

If any Freeman in the time of the Sickneſs he dies of, delivers part of his Money, Goods or Chattels to his Wife, Children or any other perſon to keep to her or their uſe, it ſhall nevertheless be accounted in the Eſtate as part of it, and may by Bill in this Court be recovered, becauſe he is incapable in the time of the Sickneſs of which he dies to give away any part of his Eſtate, otherwiſe than by his laſt Will and Teſtament.

If a Freeman makes no Will when he dies, and there be a Wife and Children left, the Administration of his Eſtate will be allowed to his Widow, who may lay claim to a third part by the cuſtom of *London*, and one third muſt be divided among the Children, and the other third part between the Widow and Children, and generally the Widow is allowed two thirds of her deceased Huſbands third part, which by Will he might otherwiſe diſpoſe of, and the Children one third.

If any Child be advanced by the Father in his life-time, either in Marriage, ſetting up or otherwiſe, and dying, the ſaid Father makes a Will, bequeathing what remains to his Widow or other Children, nevertheless the Child advanced by caſting his or her Portion into the Eſtate, has liberty to claim a part of the whole perſonal Eſtate; and this from ancient times is called *Hotchpott*, or if in his life-time the Huſband make over his Eſtate to his Children, &c. ſuppoſing to bar or defraud his Wife of the third part properly belonging to her, ſhe will be relieved by putting a Bill into this Court, which will ſet aſide ſuch Settlement.

If any Goods be omitted or undervalued in an Inventory put into this Court, or any debts discharged to be owing from the party deceased, which were justly and really due, if the Orphans can prove it, upon complaint made, the Clerk will summon a Jury to enquire upon the Inventory, and it so appearing, he will sue the Executor upon the Bond given for exhibiting an Inventory, and compel the making good so much as shall appear to be omitted, unless he can clear himself before the Court of Aldermen, who upon Application made, will hear and Examine the Matter, and do right to either party without putting them to charges.

Once a year it is the custom to Summon the Executor to give an account, and if any Money be found due to the Orphans, which has been receiv'd for Debts, &c. he must pay it in, or give security, or in default thereof, his Bond will be put in suit against him; and his method to do this is as followeth.

He must set down in Writing an Account of his Receipts from the time that he exhibited his Inventory, which being given to Mr. Common Serjeant, will be by him examined, and then he will cause it to be ingrossed, and set his hand to it; as also to a Duplicate thereof which will be delivered to the Executor, who must declare upon his Oath before the Court of Aldermen, that the Account is true, and if he is not able to give in his Accounts according to the time specified in his Bond, then he may apply himself to the Court of Aldermen, who usually give a farther set-time to do it in.

In this Court there are certain Fees claimed by the Common Serjeant, Common Cryer, Town Clerk, and Clerk of the Orphans, when Security

is given or satisfaction acknowledged according to the sums, but where the Orphans Money is paid into the Chamber, there is in such case no Fee due to any person from the Executor, &c.

C H A P. XIX.

Of the Sheriff's Courts held at the Guild-Hall in London, the manner of their practice therein, &c.

HAVING thus far treated of Matters, wherein, for the greater part, the Lord Mayor of London and Aldermen have the greatest Jurisdiction; I come now to speak of the Courts held by the Sheriffs of the City.

These Sheriffs Courts are very ancient Courts of Record, for the two Sheriffs do keep each of them a Court by Prescription and Custom, where they hold Plea of all personal Actions; and to these Courts belong two Prisons, call'd the *Compters*, the one in *Woodstreet*, and the other in the *Boultry*, and they have two Court-days apiece in every week, viz. *Woodstreet Compter, Wednesdays* and *Frydays*, and the *Poultry Compter, Thursdays* and *Saturdays*.

In a *Plaint of Debt* before either of the Sheriffs the custom is, That the Sheriff *Ore Tenus* sends to the Serjeants at Mace, either to Summon the Defendant, or to Attach his Person without Warrant, and upon a *Nihil* returned within the City, that then the Serjeant, and every of them, upon the Sheriff's command, have used to Attach and Arrest the Defendant, to have his body at the next Court

Court before the Sheriff at *Guild-hall*, &c. and in this manner they certifie their Records; but the common practice is to enter an Action at the Office at one of the *Compters*, which Action must be entered with caution, because it is the original of that Court, on which the Plaintiff must declare, and from which there can be no variation; for if there be a disagreement in the Action and Declaration, a Non-suit follows.

When any party is Arrested, he is to be detained in custody till he procures Freemen that are House-keepers to be Bail for answering the condemnation of the Court, if a Verdict pass against him, which Bail is taken by one of the Clerk's Sitters at the *Compter*, who constantly attend in their Office in their turns; and when any party is arrested, and be either in the *Compter*, or has put in Bail, the Plaintiff ought to declare the next Court-day, tho' by the favour of the Court upon the motion of his Attorney, a longer time is usually given; but if the Plaintiff neglect to fee or retain an Attorney, the Defendant may Non-suit him the first Court-day.

If the Defendant be in Prison in one of the *Compters*, he is brought to the Court to plead to the Plaintiff's Declaration by a *Duce Facias*, which is the Sheriff's Mandate made by the Clerk of the Papers. If the Defendant be a Freeman, he hath four defaults, that is, to appear the fourth Court day after Bail is put in; but these defaults are only allowable in Actions of Debt, Account or Covenant broken, and in no other cases.

The Actions usually in this Court, are either Trespass of the Case, Pleas of Trespass, Debt, Account, or Breach of Covenant.

Actions of Trespass which are either for false Imprisonment, Assaults, *Domum* or *Clausum* fre-

git, coming into an other Man's House or Ground, or taking away his Goods, or spoiling of Goods, or Trespass upon Ejectment for title of Land.

In case of an Action of Trespass entered against a Man and his Wife; if only the latter be Arrested and in Prison or Bailed, the Plaintiff may proceed notwithstanding the former is not Arrested, and the Bail is liable to pay the Recovery if the Wife absent her self.

Trespass on the Case, either for Book-debts, Words, all Assumpsits or Promises, all *Quantum Meruit*; also for Rent without Lease or Trover, and Conversion.

It is required in Actions of Trover that the Plaintiff prove Possession, Property or Conversion, being as one, and demand of the Goods before the Action brought.

If Goods be bought in Partnership, the Action must be entered against all, and you cannot proceed unless Bail be given for all the parties concerned; and if an Action on the Case be entered against a Man, and his Wife there likewise, you are barr'd of proceeding, though the Wife be Bailed, till there be Bail given in for the Husband; but if the Husband be arrested upon an Action of Case or Trespass against him and his Wife, he shall be obliged to put in Bail for his Wife.

All Actions of Debt upon Bill or Bond, commonly call'd Specialities upon Lease for Rent, upon Judgment or Statute, consider as followeth:

If two parties are bound jointly and severally, you cannot sue the one without the other, for there must be a joint Action; yet in case of the death of one of them, the Survivor may be sued.

If upon a Bill without a Penalty, a Man is bound to pay at several payments, this cannot be
sued

sued till the last payment becomes due, but in a Bond or Penal Bill it is otherwise; for upon breach of the first payment, the Obligation may be sued, but in this case no more will be given than the proper Principal and Interest with costs of Suit, unless it be upon an Obligation with special Conditions or performance of Covenant, or such like, unless the Defendant plead *non est factum*.

You may declare upon a Judgment either in *Guild-Hall* or any other Court of the like Nature; but not upon a Judgment in any other superiour Court.

And hereby Note, That it is the privilege of a Freeman to mark his four defaults upon putting in Bail, and then till the fourth Court day, he need not appear by his Attorney; but, if he appear not then, Judgment will pass against him by default; but if the Defendant be a Foreigner, it is otherwise, for if then he appear not by his Attorney the first Court-day after Bail put in, Judgment may be obtained against him and his Bail.

Again, in case of Action for other Accounts, which are either for receiving Goods or Merchandice, and not giving Account thereof, or for receiving Money, or for both or one Action; but in this case the Bail for the Defendant is not lyable to pay the Recovery, but that the Defendant shall account, Quere whether a special Action of the Case will not lie against the Bail upon their Engagement at their becoming Bail, to bring forth the Body of the Defendant, or to pay the Recovery.

Again, Breach of Covenant either by Covenant of Indenture, or by Articles under Seal, or any other Covenant under Seal.

As put case a Man be bound by Indenture to make quarterly payments, together with a Bond

for performance of Covenants, the Lessor may sue the Lessee, either upon an Action of Debt for his Rent, and so declare upon the *Reddendum*, or upon the Covenant which he may sue upon every Breach; but if once he sue upon the Bond, and obtain Judgment, he can sue no more upon the Bond, for it cannot be sued but once.

If against an Executor or Administrator, the Action must be so entered, or if it be the Executor of an Executor or Administrator, and in like manner against the Defendant. And here by the way it is to be Noted, That a man may be Executor in his own wrong, if he receive or intermeddle with the Estate of the Intestate.

If a party be the Assignee of an other, the Action must be so entered; and here further Note,

That if *D.* be the Assignee of *C.* and *A.* takes Rent of *D.* and accepts of *D.* as his Tenant, *C.* is out of danger to be sued, either for Non-payment of Rent, or breach of Covenant.

Again, Suppose the Rent to be 50 *l.* per *Ann.* and the House will not yield 40 *l.* *D.* may assign his Right and Interest to *Richard Roe*, and *A.* shall not after the Assignment sue *D.* for any more Rent, and the reason for this is, that he who admits of one Assignee, admits of twenty.

As for an Action in this Court it remains when entered in force for 16 weeks, and after Bail put in 16 weeks without Declaration, if declared good a year and a day, if Issue joyned in force ever afterward; and the Plaintiff is at all times at liberty to proceed to Tryal, if Judgment obtained after a year and a day, it must be revived.

The withdrawing an Action of Trespass, or Trespass on the Case, or Trespass upon Ejectment is 6 *d.* if Debt or Bond, &c. Account or Breach of Covenant 12 *d.* withdrawing a Declaration 16 *d.*
and

and so if at issue, or after Summons of the Jury upon the Pannel 16 *d.* if withdrawing by consent allways 4 *d.* more, *ex Assē usu Partium*, then the Defendant cannot have Judgment for charges, which otherwise he might: And here farther Note, That the Plaintiff hath four Court days to declare against the Defendant, unless he be a Prisoner if he see his Attorney, otherwise as before-said Non-suited the very first Court day.

After Judgment in Court obtained, you may speedily take out Execution against the Body or Goods, and the next day against the Bail; but if the Body of the Defendant be once taken in Execution, you cannot have a *Fieri Facias* against his Goods, but if you take the Goods, and upon due appraisement they amount not to the sum in the Judgment, you may afterward have Execution against the Body of the Defendant, or against his Bail: But if the Bail be in Execution in the *Compter*, if the Defendant come and render his Body to Prison, there they will be Discharged, or if at any time before the Reprieve, the Defendant appear to the Action, they are likewise by that means freed, and they have power themselves to carry the Defendant to Prison without an Officer, and to Reprieve him to the Action paying the Clerk 4 *d.* for marking the Reprieve, and by that means discharge themselves.

Note, That in this Court, though you see Counsel extraordinary, and pay 10 or 20 *s.* a piece, yet you will be allowed by 3 *s.* 4 *d.* a Counsel; but the Court will allow three or four 3 *s.* 4 *d.* if in a good cause.

As for Carriers and Waggoners they have of course their Return day given them if desired, by their Attorney, the charge 4 *d.*

If the Plaintiff after the Defendant hath removed his cause, bring it down again by *Procedendo* for want of putting in Bail, he is allowed the charge thereof, as also 2 s. 8 d. for the allowance, and what other charge he is at more in relation to a Tryal to his Attorney, and an Action is commonly tryed in four Court days unless put off.

From this Court the Defendant has two ways to remove the Action, *viz.* By a *Habeas Corpus* to remove it above or by a *Levata Querela* into the Lord Mayor's Court, and if the latter, the Defendant after the plaint is certified up, may prefer his Bill in the Mayor's Court if he hath Equity, or afterwards remove it from thence by *Habeas Corpus*; but if the Defendant carry not up his Plaint in due time, the Plaintiff will have a *Remandetur*, and so unavoidably try it in the Sheriff's Court. And here Note, That in all Actions under 4 l. 19 s. unless it be where the Title of Lands is concerned tho' a *Habeas Corpus* be allowed, and the Plaint returned, the Plaintiff's Attorney may proceed to try against the Defendant, notwithstanding the removal and return, and shall recover his Debt against the Defendant, but the Bail are freed; but it is otherwise if the Defendant turn himself over to the *Queens-bench* or *Fleet*.

And here Note, If there be six weeks between Bail put in, and the Issue joyned, the Defendant may not remove his Plaint by Writ, but is obliged to stand Tryal below.

The Defendant after Recovery against him by a Jury, has privilege before Judgment to mark his cause before the Lord Mayor, charges 5 s. 10 d. and then he or some other person enters into Recognizance double the recovery to the Chamber of London, to stand to such order as the Lord Mayor shall award or make therein.

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After such order made, the Defendant is to pay the Plaintiff's costs into Court within 14 days, and give security in the *Compter* by Bond, to pay the Recovery to the Plaintiff pursuant to such order, and the Plaintiff for bringing down such order pays 4 s. 6 d. which charge is allowed.

The Plaintiff may sometimes get a *Procedendo ad Judicium* out of Chancery, and prevent the Lord Mayor's Order, but then it must be done before he make such Order; but if the cause have been once removed by *Habeas Corpus*, the Defendant cannot mark it before the Lord Mayor.

And here Note, That if a Recovery be obtained on *Thursday*, it must be marked before next Court day, otherwise Judgment will be entered *Sedente Curia*: And farther Note, That if a Verdict be found for the Defendant, the Court always abateth out of the Defendant's costs 3 s. 4 d. in favour to the Plaintiff.

If a Freeman be arrested for Debt under 40 s. tho' he put in Bail, yet if he warn the Plaintiff to the Court of Requests in *Guild-hall*, tho' the Debt be upon Bond, that Court will order it, and compel the Defendant to stand to their order, also to lose his costs, &c.

If the Defendant be a Prisoner, the Plaintiff may enter his Action against him, see his Attorney, and send for him to Court by a *Duce Facias* to plead to his Declaration, if he do it not by his Attorney, and so proceed to tryal; but he must be in one of the Prisons of the City.

If any person be arrested, being a Freeman in the City, he may turn himself over to *Ludgate* by a *Duce Facias*, charge 1 s. 4 d. and this privilege have Ministers commonly called Clerks, though not free,

If an Action be entred against a party, and a Serjeant be employed by the Plaintiff taking his Fee, and he afterward Arrests the party and takes his word, the Plaintiff having Fee'd his Attorney, may give warning to the Quarterman, charge 4 *d.* viz. Warn in *J.C.* Serjeant at Mace to appear at the next Court, to shew cause why he Arrested *A. B.* and let him go without Bail to the Plaintiff's Action; and if he refuses to appear, or neglect it, the Plaintiff may have an Attachment against him, the charge of which when he appears, the Court will order him to pay; and if the Plaintiff prove the Arrest made, then if the Officer desires a farther day to bring in the Defendant with consent of the Plaintiff, it will be granted.

Or the Plaintiff may bring a special Action of the Case against the Officer, but it must be entered against him as a Serjeant at Mace on the Action, then declare specially, setting forth the Debt, the former Action, and the Arrest, which three being proved, the Jury may, and commonly do find the Plaintiff's debt and damages.

If a Defendant pleases, he may go on by *Proviso*, and if no Issue tender an Issue after a Declaration, and upon the Plaintiff's neglect of Summons of one Court day after Issue joyned, the Defendant may crave his *Proviso*, charge 2 *s.* and so proceed to Tryal, and his Costs will be allowed as before, all but 3 *s.* 4 *d.* only the Court will be for putting in Bail.

Note, That the Defendant may wage Law in Action of Debt upon a *Concellit Solvere*, unless for Rent.

Note, That if a Cause be removed by *Habeas Corpus*, pledge given for the Defendant before a Judge, the Bail is lyable to all other Declarations given
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to the Defendant's Attorney the next Term after Bail, and the Defendant's Attorney will be compelled to receive the Declarations.

CH A P. XX.

Of Attachments, properly called Forreign Attachment.

THough I have spoken already of Attachments in the Lord Mayor's Courts, wherein the nature and manner of them are shewed, yet Attachments being proper also to this Court, I shall here in Brief give the Reader a light into them, as to what is necessary to be done therein.

In all Attachments the lower it is entred must be set down; for if there be more Attachments than one, as often it happens, the first will be first served, they are always made upon a Plaint of Debt, as thus:

A. oweth to B. 50 l. and C. is indebted to A. 50 l. and B. enters an Action against A. of 50 l. and by vertue of the Action, a Serjeant Attacheth 50 l. in the hands of C. as Moneys of A. to the use of B. which is returned upon that Action; and as I have hinted, it must be returned between certain hours, for an other Attachment may after be made in the hands of C. who has no way to avoid it, but pleading the former Attachment made.

The Attachment made and returned as is said, the Plaintiff for his better security ought to Fee an Attorney before the Court day held for the same *Compter*; for tho' the Attachment be made and returned upon the Action of Debt, where
four

four defaults are marked, nevertheless if the Defendant shall come and put in Pledge or Bail to the Attachment, he may at the next Court Nonsuit the Action, and recover Charges against the Plaintiff, which if the Plaintiff's Attorney had been Fee'd, he could not do.

Four Court days must pass before the Plaintiff can cause the Garnishee in whose hands the Money is attached, to shew cause why the party who made the Attachment shall not condemn it to his use.

Then the Garnishee may appear in Court, by his Attorney wage Law, or plead he hath no Moneys in his hands of the Defendants, or other special matter.

If the Garnishee refuse to wage Law, the Plaintiff may try the Cause in four Court days following, after the *Scire Facias* come into Court, and the Plaintiff must put in Bail or Pledge in that case, that if the Defendant shall come within a year and a day, and can discharge himself of the said Moneys so condemned in the Court, and that he owed nothing to the Plaintiff at the time of the Plaintiff mentioned, the said Money shall be forthwith coming to the Plaintiff, and an Attachment may likewise be made of Goods, or for Money and Goods together; but the sum must be certain all upon the Attachment, and both in one *Scire Facias*. If Goods, then Judgment for an Appraisement (if no appearance by the Garnishee) then the Plaintiff proceeds to a Bill of Appraisement, and to charge for summoning the Jury; then he must prove the value of the Goods, and Judgment then passeth, and then Bail and Satisfaction, and then Attachment is perfected, so that the Defendant cannot come and put in Bail to dissolve it.

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But the Plaintiff must take care, that after Judgment is given by the Court for the Appraisement of the Goods, he must bring two Freemen of *London* into the Court the next Court day following, to make Oath they have made an Appraisement of the Goods according to their best skill and knowledge, who put their hands to the Appraisement, and an Attachment is never thro'ly perfected till there is Bail and Satisfaction upon Record, for that Bail may be put in to dissolve the Attachment, and then all the Plaintiff's charge is lost and himself never the nearer; and in such case the Defendant may have a Note from the Clerk, directed to the Garnishee, in whose hands the Goods or Moneys were, certifying him, that the Attachment made in his hands is dissolved by the Defendants putting in Bail; so that he may safely deliver the Goods, or pay the Moneys to the Defendant.

Of Sequestration.

A Sequestration is made on an Action of Debt as an Attachment, for the Action being entered, the Officer goes to the House, Shop or Warehouse, there being no Person therein, and hangs on a Padlock, sealing the Key-hole, after uttering a form of Words to the purpose, and so makes return at the *Compter* upon the Action; and four Court days being past, the next Court day after the Plaintiff may have Judgment to open the Doors and appraise the Goods by a Serjeant, who takes a Bill of Appraisement of the Goods and Merchandice therein, having two Freemen who appraise them according to their best skill and knowledge, of which they are to be sworn the next Court

Court day for that *Compter* where the Action is entered; then the Officer puts his hand to the Bill of Appraisement, and the Court grants Judgment as upon an Attachment. However in this Case as upon an Attachment, the Defendant may come and put in Bail to the Action before satisfaction, and dissolve the Sequestration, or after satisfaction put in Bail *ad disprobandum debitum* to disprove the Debt, and the proceedings after Bail are alike as upon the Attachment.

C H A P. XXI.

Of the Office and Court of Assurance in London for Merchants, &c.

THIS Court or Office for the better Encouragement of Merchants and other considerable Traders was first Erected by the Stat. of 43 *Eliz. chap. 12.* and upon some hindrance and delay by reason of the many persons that were constituted to make up a Court, it was taken into farther consideration, and by a Statute made 12 *Car. 2. chap. 23.* three Commissioners were impowered to make up this Court, *viz.* a Doctor of the Civil Law, a Barrister of the standing of five Years, and a Merchant, &c. who after being sworn before the Lord Mayor of *London*, have power to act in all Cases, as to hear, examine, order or decree such Causes in a summary manner as shall come before them, without delay of tedious Pleadings, or chargeable Attendance, with a power to summon persons, examine upon Oath, and for Contempt, or where they see just cause, they may commit the Offender to Prison, &c. as if any witness refuse

to come upon the first Summons, and a tender of reasonable Charges, upon the second Summons, he may be imprisoned by this Court or pay cost. and usually causes come in 14 days to an Issue, their proceedings being as well out of Term as in Term; and if the Sentence given in this Court be supposed to be unreasonable, then the party aggrieved may appeal to the Lord-Keeper in the High-Court of Chancery, who has power to determine the same; but before any Appeal can lie, the whole sum in dispute must be paid with full Costs to the Appealed.

This Court may Decree against many Insurers at once, which at Common-law must be sued distinctly, tho' the Execution cannot lie against Body and Goods, but at Common-law it may lie against either.

If a private Policy of Insurance happens to be lost or destroyed, it is of no avail if there be no Entery, except there be sufficient evidence, that there was such a writing or contract, as also a copy of it; but if it be a publick Policy, then is the Entery sufficient as an Evidence or Testimony for this Court to take notice of and proceed upon, and so to determine the matter as they shall see cause.

The manner of Insurance is of great Antiquity, being projected and begun for the encrease of Navigation by *Claudius Cæsar* Emperour of *Rome*, and has ever since had wonderful success in promoting Trade, especially by way of Merchandice, and causing Adventurers to discover strange Countries, and are either publick or private.

A publick Assurance must be entered in the Office of this Court, kept upon the *Royal Exchange* in *London*, for the better conveniency of Merchants, to which they or others may resort; and so upon
search

search be satisfied what Cargo or Ships are Insured, and at what Premio or Rate.

As for private Assurance that is commonly between Merchant and Merchant or others, being as the former entered in the Office, and stands of equal force at Common-law by the Statute 43. *Eliq.* but if not entered, they are not determinable in this Court, but result on the Common-law, and all of these are good and of force; some are made for places general, others for places certain, and the Port to be named: As for the first, it is when a trading Voyage is made without any limited Place or Port certain, but the Ship takes in Goods at one Port and sells them at an other; so that the party undertaking such Assurance, is obliged by the Policy to make good the Ship or Cargo, or such Damage as is sustained according to the agreement till the Ship safely returns to the Port where she set out.

If it be to a certain Port, and if cast away in the Voyage, or any way miscarry before arrived at the Port agreed on, then to be made good by the Insurer; but if safely landed, the Premio to be paid upon the first notice, if so agreed on, and the like upon Goods inward bound as agreed on.

You may also Insure Goods sent by Land, tho' not so often practised as a Man going to Sea, and fearing to be taken a Captive by the Corsaries of *Barbary*, or any other Pirates, may Insure his Person, and if taken, the Insurer is obliged to redeem him with as much speed as may, *viz.* pay the Money insured for the paying his Ransom.

C H A P. XXII.

*Of Trade and Merchandising with several
useful Remedies thereon.*

HAVING spoken of the Office of Insurance so beneficial to Trade, tho' it may seem something out of the way of this Treatise; I shal' here nevertheless set down some things very material to be known in Trade for the benefit of Citizens and others, of which many may be ignorant.

First, To prevent mistakes, all Merchants and Dealers are to be careful in setting Marks or Ciphers on their Bailes, Casks, Boxes, &c. also a Number, that if any mistake should happen, it may be rectified with the greater facility, or the party may know where to have Reparation if damage be sustained, and every man ought to have a particular Mark or Cipher, that so his Goods may be distinguished from others be they better or worse.

A Freeman of London by custom of Trade has an allowance called Tret, which is four pound in every 104 pounds weight for making up drafts or waste, unless the bargain made to the contrary. Upon cheapness of buying and to find the Tret, having subtracted the Tare from the Gross, cast the Remainder into pounds suttle, which when divided by 26, you will find the Quotient is the Tret to be allowed in the whole, which subduet from the pounds suttle, and the remainder is the neat or clear weight.

Tare is the weight of the Box, Chest, Cask or Packing Cloath, or Mat, exempted from the neat Goods

Goods they contain, especially in Goods of value, according to the Reason and Custom of Trade, and so an abatement made proportionably as marked, if any such mark there be, if not, an other of like proportion to be Ballanced against the Cask, &c. if other was it cannot well be estimated, and this in the Invoice is called Tare, intimating the weight of the Chest, &c. was considered before the Goods were put into it.

Note. There is a Distinction in weighing between that call'd Neat, and that call'd Gross and Suttle, for between the Gross and Neat is an allowance for Tare; as also loss and damages, the draughts being likewise considered as in Tobacco, two pound allowed to every hundred weight over what may be allowed in the custom if Damaged.

The difference between the Suttle and Gross hundred is 12 pounds, the first account 100 pounds, the latter 112 or the great hundred.

Now it happens in Trade that there is great Trust, and the time in some cases is by custom of Trade and Dealing, at other times as it can be agreed upon between Buyer and Seller; but many times when the Bargain is made, the Buyer will nevertheless pay ready Money, which is call'd Prompt payment, but then requires abatement for the time the trust is given, which is call'd discount, and sometimes is six, sometimes eight in the hundred pound payment, or so proportionably to the sum paid and time given.

If an English Merchant lade Goods out of one Ship into an other, altho' the Receipt of the subsidy be distributed into several Offices, yet is he to pay no more but for a single Entery.

Merchants for all Goods opened and not entered above 10 s. custom shall pay Fees; he shall also pay for Goods short entered above 20 s. custom

but

ut if duly Entred, the Merchant is exempted from charge.

The Merchant is to be allowed for Tare in custom, upon all Commodities in which Tare is allowable.

As for Entry of Goods, care ought to be taken least by mistake or oversight Damage follows; for if you Enter one thing for another, it is a false Entry: As suppose Fanns for Haberdashery, for they are to pay according to value, viz. 1 s. for every 10 s. value, so that if they come to be ship'd off, and the Searchers find in your Coquets so much Haberdashery, and then upon search find Fanns amongst it, they will be by reason of a false Entry seized and carried to the Queen's Ware-house, and so put you to trouble and charge to get them out again.

Therefore where Goods are not expressly mentioned under any head in the Book of Rates, but remain doubtful, it is the safest way to go to one of the Clerks at the *Custom-house*, and declare what your Goods are, and so you will be directed under what Denomination they ought to be Entered; neither is it sufficient only to discharge the Customs, but the Fees also of several Offices, as Bills of Entries, Coquets, Certificates, &c. of the Searchers, Waiters, Clerks, Visitors, &c. which are set down in the Book of Rates.

C H A P. XXIII.

Of the Ecclesiastical or Spiritual Court, and the proceedings therein.

THese Courts were anciently call'd *Halimots* or *holy Cirogemots* or *Chirogemots*, and are many in Number, and different in Nature; the highest and greatest is call'd the Convocation of the Archbishops, Bishops, and the whole Clergy of the Provinces of *Canterbury* and *York*, to be summoned by the Queen's Writ, and can do nothing without her assent first had.

This Convocation consists of two Houses, the upper wherein sit the Archbishop and Bishops, and the lower wherein sit the whole Clergy of both Provinces, to be either present in person, or by their Representatives, 24 *Hen. 8. chap. 12.* 13 *Elix. chap. 12.*

Their Jurisdiction is to enquire into and punish Heresies, Schisms, and other Ecclesiastical and Spiritual causes proceeding therein, *Juxta Legem Divinum & Canonices Sanctæ Ecclesiæ.*

The next in order are the Provincial Synods of *Canterbury* and *York*.

The next the Court of Delegates, to which there lieth no Appeal from Sentence given in the Arches.

After these are the General Courts of the Archbishop of *Canterbury*, that is to say, the Consistory or Court of Arches, as well for Appeals as matter of the first Instance.

The Court of Audiences, or the Chancellour's Court which was used to be holden in the Archbishop's House.

The

The Commissioners (or the Prerogative) Court for the Probat of Wills and granting Administrations, and the Court of Faculties and Dispensations; but this last holdeth no plea of Controversy.

Then are there the Special Courts of this Archbishop, as a consistory holden by the Commissary at *Canterbury* for his own Diocess, his Archdeacon's Court, and the Court of those peculiar Deaneries that appertain to him, and lie with the Diocess of other Bilhopricks.

The Archbishop of *York* and every other Bishop hath within his Diocess, the Court of his Chancellour, and the Court of his Archdeacon or official.

The Judges of these Courts are Civilians or Divines, and the Pleaders both in the Admiralty and Ecclesiastical Courts, are Doctors and Proctors of the Civil Laws.

Some matters relating to the practice of the Civil Law, in the Court of Arches, &c.

Having spoken of these Courts, it will not be consistent with my method to leave them before I have said something of the practice of the Civil Law. These Prattisers take their Degrees at *Oxford* and *Cambridge*, and have a College in *London*, call'd *Doctor's Commons*, where are kept Courts and Pleadings every Term, which begins and ends almost at the same time with the Term at *Westminster*.

The Court of Arches here, the Judge whereof is call'd, the Dean of the Arches, having Jurisdiction over a Deanery, consisting of 13 Parishes within

within *London*, exempt from the Jurisdiction of the Bishop of *London*. To this Court are directed all Appeals in Ecclesiastical matters within the Province of *Canterbury*; to this Court belongs divers Advocates, all Doctors of the Civil Law, two Registers, and ten Proctors, and the Judge of the Arches sitteth alone without any Assessors to hear and determine all Causes without any Jury of 12 Men.

From this Court first goes out a Citation, then a Bill and Answer, then by proof Witnesses and Presumption, the matter is argued *pro & contra*, and the Canon of the Civil Law quoted; then as it appears, the definitive Sentence of the Judge passeth, and upon that Execution follows. But by the Statute of 25 *Hen. 8.* it was provided, That it shall be Lawful for any Subject of *England*, in the case of Defect of Justice, in the Court of the Archbishop of *Canterbury*, to appeal in the Court of Chancery, and that upon such appeal a Commission under the great Seal to certain Persons, particularly designed for that Business; so that from the highest Court of the Archbishop, there lieth an Appeal to this Court, and beyond it to no other: It is call'd the Court of Delegates, and in Civil Affairs is the highest Court in *England*.

Ecclesiastical Criminal Causes are tryed by way of Accusation, Denuntiation or Inquisition: The first, when some person takes upon him to prove the Crime; the second, when the Church-Wardens present and are not bound to make proof, because it is presumed that they present without Malice, and that the crime is notorious; thirdly, by Inquisition, when by reason of common Fame, enquiry is made by the Bishops *ex officio suo*, by calling some of the Neighbours, or the party accused

cused to their Oaths, but this Oath *ex officio* was taken away by Parliament in the Reign of King Charles I.

If a party accused submit not after Admonition, he is Excommunicated from the Church, and disabled to be Plaintiff in a Law-suit, &c. which is termed *Excommunicatio Minor*, or the lesser Excommunication, but *Excommunicatio Major* the greater Excommunication excludes, not only from the Church but from Society in all Temporal Affairs; and this for Heresie, Perjury, Incest or such grievous crimes, then a Man cannot be Plaintiff or Witness in any Civil or Ecclesiastical Court, and if he continues so to be Excommunicated 40 days, the Queen's Writ *Excommunicatio Capiendo* will be granted out of the Chancery, and if taken by it, the party must lye irretrievable in Prison without Bail, till such time he has submitted to the Bishop, and satisfied for what he is charged with. There is an *Anathematis* which is inflicted on an obstinate Person wherein he is cursed and rejected, &c.

There is also an Interdict, prohibiting all Divine Offices to places or people, if to people, it follows them any where, but if to a place, the people may go elsewhere to hear Divine Service, &c.

Sometimes a person is adjudged a Delinquent, and then put to do publick Pennance by standing bare Headed, and bare Footed, in the Church-porch, with a White Sheet about him, and a White Wand in his Hand, and then he is to go into the Church, where his Crime being publickly repeated, and he pressing Sorrow and Repentance is there Absolved; but some Cases the party may come off for a Sum of Money to the Poor, or some Pious use.

Christian Burial is denied to persons Excommunicated or Perjured, to such as kill themselves; Hereticks, Appostates and Extortioners, and sometimes the Clergymen are suspended *ab officio*, viz. from the Exercise of their Function; sometimes again there is a Deprivation, a *Beneficio*, when deprived of their Living, sometimes they are degraded; that is, deprived of their Orders, as may happen for some Heinous Crime, &c.

The Office of Actuary attending the Court of Arches, is to set down the Judges Decrees, Register the Acts of the Court, and send them in Books of the Registry.

The Office of the Register is that he attend the Court, or do it by his Deputy, and to receive all Libels or Bills, or Allegations, and Exhibits of Witnesses; also to fill all Sentences, and keep the Records of the Court.

The Beadle attending the Court, carries a Mace before the Judge, and calls the persons cited to appear.

The Proctors are such as exhibit Proxies on the behalf of their Clyents, making themselves parties for them, and draw and give in Pleas, as Libels and Allegations on the behalf of their Clyents, produce the Witnesses, prepare the Causes for Sentence, and attend the Advocate with the Proceedings.

All Arguments made by Advocates, and all Petitions made by Proctors, are to be in Latin; all Proseses of this Court run in the name of the Judge, and are returnable before him, and the Places and Offices of this Court are in the gift of the Archbishop of *Canterbury*.

These and many other are the proceedings of the Ecclesiastical Courts, which in so small a Volume cannot have room to be incerted; howe-

ver,

ver, these Ecclesiastical Laws consist of Canons made by several Counsels, the Opinion of Fathers, the Decrees of several Bishops of *Rome* formerly admitted, and our own Constitutions anciently made in several Provincial Synods, which by the 22 *Hen. 8.* are in force so far as they are not repugnant to the Laws and Customs of *England*, or the Prerogative Royal: Moreover, the Canons made in the Convocation of latter times, as *Primo Jacobi* 1. and confirmed by that King; some Statutes enacted by Parliament and divers old Customs, not put into Writing, but yet in use, and where these fail, the Civil Law takes place, and ought to be used with Moderation and Mercy, especially to those that are Penitent and Complying; for as the Fathers of the Church are in some places stiled Angels of Peace, so ought Bishops and others to make good that Character with all Lenity and Christian Indulgence, &c.

C H A P. XXIV.

Of the Court of Marshalsea, and Court of the Queen's Pallace at Westminster, their Jurisdiction and the Practice therein, &c.

HAVING spoken of the Courts of Judicature &c. within the Honourable City of *London*, that nothing may be wanting to compleat this Work, or give the Reader a directing insight into such things as may at one time or other prove much to his Advantage; I shall now proceed briefly to treat of other Courts adjacent to the City, in

which great numbers of people are concerned, so that this may be a leading to a great knowledge in these affairs, and of these in Order.

As for the Court of Marshalsea, now held on *Frydays* weekly at the Prison-house in *Southwark*; it is an Antient Court of Record, instituted to determine Suits between those that are of the Queen's-house, and others within the Verge, and the Judges are the Steward and Marshal of the Queen's-house, who have Cognizance of all manner of Pleas of Trespass, committed within the Verge of the said House, so as either party be thereof, and of all other Actions personal, wherein both partys are the Queen's Servants, and this is the proper Jurisdiction of the Marshal's Court, or Court of Marshalsea.

But the *Curia Palatii*, or Court of the Palace at *Westminster*, was Erected by King *Charles I.* by his Letters Patents, dated the second of *July*, in the sixth year of his Reign, and made a Court of Record by, of the Court of the King's Palace at *Westminster*, the Liberties whereof extendeth 12 Miles round *White-hall*, which Jurisdiction was confirmed by King *Charles II.* and here they try all personal Actions between party and party, tho' not of the Household nor within the Verge, and it may be held in any place within the Jurisdiction, that is within 12 Miles from *White-hall* every way.

The proper Judges of this Court are the Stewards of the Queen's-house, and the Knight-Marshal for the time being, and the Steward of the Court and his Deputy who is a Lawyer.

The proceedings here is by *Capias* or Attachment, which one of the Knight-Marshals-men is to serve upon the Defendant, to Arrest his Person, that he may be forth coming at the next Court,
and

and if the partys Attached or Arrested gives Bail the Marshals-man takes Bond with sureties for the Defendant's appearance at the next Court, as himself will be responsible for.

The Defendant upon his Appearance is obliged to put in Bail, to answer the condemnation of the Court if the Cause go for the Plaintiff, and if he neglect so to do, without he takes out a Rule to delay it till the Court day following, the Plaintiff may have the Bond assigned over to his use that was taken for the Defendant's appearance, and so sue the Bail if he thinks fit.

The next Court after the Bail is taken, the Plaintiff is to Declare, setting forth in his Declaration the cause of his Action, and after that he must proceed to issue and Tryal by Jury, according to the course of the Common Law, and in four or five Court days, usually a cause is brought to Tryal, so that their proceedings are speedy, except a *Habeas Corpus cum causa* be brought and allowed to remove it; for tho' they try great debts, yet the proper Jurisdiction is not for above Five Pounds, or rather all debts under, and for what is otherwise a *Habeas Corpeus* will lye, tho' sometimes a greater debt is alledged, and so the cause under that notion is removed into the Queen's Bench or Common Pleas, but if bail be not put in above in due time, a *Procedendo* may be obtained to bring it back again, and unavoidably try it in this Court.

In this Court they hold Plea for all manner of Personal Actions, as Debt, Trespass, Battery, Slander, Trover, and all Actions on the Case, &c. And it is many times very grievous to the poorer sort of People, by reason cruel Creditors for a small matter do sue them here, and either

keep them languishing in Prison, or put them to more Charges than their Debt amounts to, and often for Words or foolish Quarrels, so that by their Strictfulness many are ruined and undone.

C H A P. XXV.

Of the Court of the Dutchy Chamber at Westminster, the Nature or Practice, &c.

THere is a Court held at *Westminster*, beside the superiour Courts, call'd the Court of the Dutchy Chamber at *Westminster* very ancient, for it had its beginning in the Reign of King *Edward III.* who first gave the Dutchy of *Lancaster* to his Son *John of Gaunt*, and endowed it with all Royal Rights and Priviledges; after that it was extinct in the Person of *Henry IV.* who united it to the Crown, but he afterward separated it again, and settled it on him and his Heirs, and so it continued during the Reign of *Henry V.* and *Henry VI.* his Son and Grandson, but it was again united to the Crown by *Edward IV.* and so it continued to the Reign of *Henry VII.* who again separated it from the Crown, and left it to his Posterity who yet enjoy it, and for the management of the Revenues chiefly this Court is held.

The proceedings in this Court is, as in a Court of Chancery for Lands and other matters within the Jurisdiction of the Court by English Bill, &c. and Decree, but this Chancery is not a mixed Court, as the High Court of Chancery of *England* is, partly of the Common-Law, and partly of Equity,

quity, but admitting only some little mixture of Common-Law in special Cases, and in some things they are guided by their proper Customs and Prescriptions respectively.

There is also a Chancellour of the Country Palatinate, and the Process of this Court is first a Privy Seal, and Attachment, and a Commission of Rebellion in case of Contempt, as in Chancery.

The Officers in this Court are the Chancellour, the Attorney, the Receiver General, the Clerk of the Court, the Auditor, the Surveyor, and the Messenger.

There is an Attorney of the Dutchy in the Chancery, and an other in the Exchequer; there are also four Persons Learned in the Law, Assistants and of Counsel with the Court.

The Seal of the Dutchy of *Lancaster* remains with the Chancellour at *Westminster*, but that of the County Palatinate remains always in the County Palatinate with the Keeper thereof, and all Grants, Leases of Lands, Tenements and Offices, &c. in the County Palatinate pass under that Seal, but Grants out, the County Palatinate, and within the Survey of the Dutchy, shall pass under the Seal of the Dutchy, and not any other, 27 H. 3. cap. 16.

Justices of Assize of Goal Delivery, and of the Peace, are, and ever since the Erection of the County Palatine of *Lancaster*, have been made and assigned by Commission, under the Seal of the County Palatine of *Lancaster*.

In this County Palatine, Fines are leavied with three Proclamations before the Justices of Assize there, or one of them, and all the Recoverys to be had of any Lands or Tenements in the County Palatinate are to be had in the Court of that County, and cannot be had at *Westminster*.

In Trespass in the County Palatine of *Lancaster*, the Defendant pleaded a Foreign Release, and the Court perfixt a day to the partys in Bank—and Record must be removed by *Certiorari* in Chancery, and by Mittimus into the Queen's Bench, there to be tryed 20 *Hen. 6. 48.*

If issue be joyned in the Queen's Bench, or Common Pleas tryable in the County Palatine of the County of *Lancaster*, it shall be tryed in the County of *Lancaster*, and remanded hither 27 *Edw. 3. 84. 21 Hen. 7. 33.*

C H A P. XXVI.

The Court or Commission of St. Martin's Le Grand by Aldersgate, London.

THE Liberty of *St. Martins Le Grand* holding of the Dean and Chapter of *Westminster*, though it lyes as it were in the heart of the City of *London*, yet is it distinct from the Government thereof, so that the Officers of *London* cannot enter to make Arrests there, being a Bailiff belonging to the Liberty, and a Steward who holds a Court of Record; they have privilege to chuse Parliament Members for *Westminster*, in conjunction with the Inhabitants there, and their Officers are peculiar to themselves without depending on the City. They have a Prison-house within the Liberty, and keep a Court every *Wednesday* for the tryal of all personal Actions whatsoever held in the Court-house.

The leading Process is a *Copias* against, or an Attachment against the Goods, so that there a
Man's

Man's Goods, may be Arrested in his own House upon the first Process, and carried away as well as his Body, which carries with it a speedy recovery of Debts, tho' the Inhabitants being for the most part substantial, the proceedings to this are not very frequent.

C H A P. XXVII.

Attaint and Inquest.

IN this matter none shall be Sworn or Summoned upon the Inquest in any Court within the City of *London*, except he have Lands or Goods of the value of Forty Marks, or for Land or Action personal, where the Debt and Damages exceed Forty Marks; if he hath not Lands and Goods to the value of 100 Marks, the party to have avail thereof by way of Challenge, and such persons impanelled to forfeit 12 *d.* in issues, and so to double, &c.

And that upon a false Verdict, there Attaint shall be by Bill in the Hustings, and the form how they shall proceed, and who shall be Judge, and that the Tryal shall be there and not elsewhere; and that none of the Grand Jury, or Petty Jury shall be punished otherwise than is limited by the Statute. That every of them shall forfeit 20 *l.* and be imprisoned by the space of six Months, and that upon the Affirmance of the first Verdict, they may enquire if any of the Jury took Rewards, &c. and that he loses *Decies tantum*, and to be imprisoned and disabled to be sworn a Juror, and an Action of Debt is given for the Plaintiff in

the Attaint, who hath lost his Debt or Damages to sue where he will, and if the Plaintiff be Non-suited in Attaint, that he shall be Imprisoned and shall be fined, and party Inquests shall be in Attaint, where one of the partys is a stranger, Stat. 31 Hen. 7. cap. 21. Attaint 13.

Note, That in Attaint in London, he who is worth 100 Mark, shall be a sufficient Juror without Challenge upon the Statute of 23 Hen. 8. and that the Justices shall sit at the Guild-hall, or other convenient place within the City to swear the Jury, and to take the Verdict, and that London shall not be compelled to sue Attaints but within the City, Stat. 37 Hen. 8. cap. 5.

A Challenge that the party hath nothing within the Ward, shall be void, Stat. 7 Hen. 7. cap. 4.

The Sheriffs of London may return Pannels in the Exchequer of Citizens, having Goods of the value of 100 Marks to be tryed at St. Martins by *Nisi Prius*, and if it be before any Justice otherwise to be tryed, then they may return Jurors according to the usage without forfeiture, 5 Hen. 3. cap. 35. Jurors 14, 15.

All persons within Cities or Borroughs, worth 40 l. shall be admitted Jurors in Tryals of Murthers and Fellonys in every Sessions, and Goal-delivery to be holden in and for the Liberty, *Provido* that it do not extend to any Knight or Esquire who dwells here, 23 Hen. 8. Jurors 16.

Oyer and Terminer shall be of all Fellonys throughout the Realm, without prejudice to the Franchises and Libertys, and to the five Ports, but they to enjoy their Libertys as before, 2 E. 3. cap. 7. Oyer 3.

C H A P. XXVIII.

How to sue a Person to an Outlawry in the Common Pleas, &c.

THis is the common course of suing to an Outlawry, where the Person absconds and cannot be Arrested upon mean Process, and this Outlawry cannot be perfected under three Terms, as thus: If you would begin in *Easter* Vocation to sue a Bond, you must be careful to take the Benefit of the foregoing Term, or it cannot be finished by *Michaelmas* Term ensuing, but proceed thus the Original returnable; *Quindena Pasche*, the *Cap. Teste. Quindena Pasche ret. Quinque Pasche Alias Capias teste, Quinque Pasc. ret. Crastin Trin. Pluries Capias teste Crastin Trin. ret. Tres Trin.* and the Exigent and Procumation returnable in *Mense Michaelis*, both of the same Teste and Return: So observe between the Teste and Return of each Writ, is alway full fifteen days or more, and the Return of the first Writ is the Teste of the second, and so in order.

When you have returned a *Nihil* upon the Original, then you must carry it to the Philizer of *London* to File, who makes a *Capias* and an *Alias Capias*, where upon return *Non est Inventus*, go your self of course and carry them back again under Seal to the Philizer, who will thereupon make a *Pluries Capias*, which also return *Non est Inventus* and carry it under Seal to the Exigenter *London*, who will make thereupon and Exigent and Proclamation, which Proclamation give or send to the Sheriff of the County, where the Defendant

dant lives, any where within *England or Wales*; for no County Palatine or Liberty soever, can privilege from the Process of an Outlawry, and carry the Exigent to one of the Compters in *London*, where Clerks attend for that purpose, who proclaim them upon five Hustings-days, and the party not appearing by the *Quint exactus*, is returned Outlawed; and indeed, laying the Action in *London*, you may sue to the Outlawry sooner than in the County, for the Hustings-days are oftner than the County Court-days; but if the Defendant appear upon the Return of the Exigent, he shall not be compelled to put in special Bail be the Debt never so great; but if he stays till he is Outlawed, he must Reverse it and put in special Bail if the Debt be above 20 *l*.

C H A P. XXIX.

The manner how to reverse an Outlawry.

IF a Man be sued to an Exigent, and do not appear at the return of it by *Supersedias*, you must call for a return of the Exigent and of the Proclamation, which when you have returned, the Defendant Outlawed carry the Exigent so returned to the Outlawry Office, and the Clerk of the Outlawrys will file it, and make you out either a general *Capias utlagatum* against the Body only, or a special Writ against Body and Goods, by which means the Defendant is disabled to sue, or take the benefit of the Law against any Man so long as he remains Outlawed, therefore to relieve himself he must reverse the Outlawry, and put in special Bail if the Debt be above 20 *l*.

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To reverse an Outlawry in the Court of Common Pleas ; in the first place, get a Copy of the Exigent, and to do this, get a Note at the Outlawry Office how to find it at the *Custos Brevium*, and having got a Copy of it careful, Note whether there be any Errors in it, as the insufficient return of the Exigent ; if there be any insignificant word therein, or any material word omitted, or want of form, or a word therein untruly written in the Dashes, or want of a Proclamation, all these are good Causes of Reversals, and if you find an Error go to the *Custos Brevium*, and bespeak the Bundle of Writs to be brought in Court the next day, and there shew to the Secondary or Prothonotary the Error upon the Exigent, which is shewed to one of the Judges in Court, and after the Prothonotary takes a Note of the Error, and makes a Certificate to the Outlawry Office of the Reversal, which Certificate being brought to the Clerk of the Outlawrys, he marks the Outlawry-Book discharged, and then is the Reversal drawn up in Paper and Entered upon the Roll, and then the Defendant is restored in *Statu Quo Prius*. But when this is done, it must be before the Body or Goods or Lands, &c. are seized by a *Capias utlagatum*.

There is yet an other way of Reversing an Outlawry by Writ of Error, if the Defendant's Body or Goods be taken upon the *Capias utlagatum*, in the Vocation time by the Plaintiff's Attorney going to the Clerk of the Plaintiff's Attorney, going to the Clerk of the Errors ; and if the Debt be above 20*l*. he must put in special Bail, or the Attorney must undertake there shall be Bail put in for the Defendants discharge, which being done, the Clerk of the Errors will make out a *Superseas* to the Sheriffs, whereupon he is to discharge both
the

the Party and his Goods if taken, if not, he is to forbear; but if a Man be Outlawed after Judgment, then this kind of Reversal will not be allowed for an Outlawry after Judgment, till the Plaintiff hath acknowledged satisfaction upon Record, or the Defendant hath payed the Money into Court.

C H A P. XXX.

How by Habeas Corpus to remove a Prisoner out of any inferiour Prison to the Fleet, &c. or the Cause out of any inferiour Court into the Common Pleas, &c.

IF a person be Prisoner in the Country, and you would remove him to the *Fleet*, if there be no cause depending against him in the Common Pleas, and you would remove him, the way is either to charge him with an Attachment of Privilege at an Attorney's Suit, or a *Capias* at the Suit of any Friend, and then bring a Writ of *Habeas Corpus cum Causa*, and then the cause in the Common Pleas being returned amongst other causes, the Prisoner with his causes will be turned over to the Fleet.

But if you would remove any cause out of any inferiour Court or Corporation, if the Debt or Damages exceed Five Pounds, you must get a Writ of *Habeas Corpus cum Causa* directed to the Court where the Action depends, which if it be in or about *London*, it must be returnable immediately at the Judges Chamber; but if in the Country,

Country, then at a day certain in Term-time, and upon the removal the Defendant must put in special Bail before a Judge, or for want thereof, the Plaintiff may get *Procedendo* and bring it down again and so try it below; and in the like manner you may remove out of the Country, or any inferiour Court to the Queen's Bench by *Habeas Corpus*.

C H A P. XXXI.

Of the Antiquity of Jurys, things they must Consider, and how they ought to be qualified to be Jurors.

THe Tryal by Jurys is ancient in this Kingdom, and it is our Happiness above other Nations, that a Man has so great a benefit to be tryed by his equals; Men unprejudiced and unbyassed to deliberate upon hearing the Evidence, and weighing in their Consciences, the merriit of the cause. This way in some degree was not unknown to the Ancient Britains, as by some of their Books and Monuments of Antiquity appears, and we find it practised by the Saxons as Mr. Lambert makes Remarks in King Ethelred's Laws, p. 118. and Cook 1 part institutes, fol. 155. And since more Amply confirmed after the Norman Conquest by *Magna Charta*, every day growing more and more in esteem, because no Man's life, unless it be in Parliament, which is a supream Court, and is supposed will never do any Man wrong, shall be touched for any Crime whatsoever, but upon being found guilty on two several Tryals, for so
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may that of the Grand and petty Jury be rightly termed, and the Judgment of twice twelve Men at least all of his own condition, viz. 12 or more to find the Bill against him, and 12 more to find him guilty or acquit him on the general Issue; all which Jurors ought to be substantial honest and impartial Men, being Neighbours of the party accused or supposed place where the Fact was committed.

A Jury in this case upon bearing the Evidence, must be fully satisfied in their Consciences, that the party is guilty, and so unanimously pronounce him upon their Oaths, or else he may not be condemned; for the Office and Power of these Jurys is judicial, from whose Sentence the Indictment is to be valued or invalid, &c. to speak plainer, the party indicted to be found guilty or acquitted, for from their Verdict there lyes no Appeal.

As for the Qualifications of such as are to be upon Jurys, the Law has provided, that they shall be Persons of Honesty, Ability, Integrity, and Indifferency; and *Cooke* in the first part of his Institutes, *Sect.* 234. fol. 155. say, That a Juror must be *Liber Homo*, not only a Freeman not bound, but one that has such freedom of Mind, that he stands indifferent as he stands unsworn; that he must be *legalis* lawful, and by the Law these properties are required in a Juror, 1. He ought to have his dwelling most near to the place where the Question does arise or is moved, 2. He must be most sufficient both in Competency of Estate and Understanding, 3. He ought to be least suspicious, viz. be indifferent as he stands unsworn, and then is he accounted *Liber & legalis Homo*, otherways it is held he may be Challenged and not Sworn, for the Prisoner may challenge 35

in case of Treason, and so in case of Fellony, without showing cause, and as many more as he can assign just cause against; in brief Jurors must be free from and of all manner of Bondage, Obligations, Affections, Relations and Prejudices. They must be the Peers or Equals of the party they are to try, and the full age of One and Twenty or upwards.

They were anciently all Knights as you may find it in *Glanvil* and *Bracton*, and still must be Men of Worth and good Repute; and as they are returned by sworn Officers, the Sheriff, so they of the petty Jury are to be sworn severally on every Tryal, the better to mind them of their Oath, or they to be charged upon their Oath with each party that they are to try.

C H A P. XXXII.

Of Indictments, Presentments and the difference between them; the Oath Administred to Grand Jury, and how they ought to enquire, &c.

THo' both as I have said are Jury, yet there is made a small distinction between them in Title, as Grand and Petty Jurys: The first is so called as it seems, because it usually consists of a greater number than the other, as 17, 19, 21. or the like; yet they can make no Verdict or Presentment, unless twelve of them at the least agree, and then tho' the rest consent not, it is held sufficient and is so, and further so called, because they generally are of the greater Quality, and

and likewise in regard of their Power, because their Office is more great and general extending to all Offences throughout the whole County, for which they serve as Jurors.

The petty Jury, commonly called the Jury of Life and Death, consisting of 12 Men, are all to agree in a Verdict, or the Verdict cannot be taken or is no Verdict.

The Grand Jury or Grand Inquest, for so they are often called, have principally two things in their Consideration, viz. Indictments and Presentments; Indictments are those that are usually drawn up in Form at the instance of the Prosecutor, or by the order of the Courts, and then brought before and delivered unto the Grand Jury, and the Witnesses Sworn attend them to be Examined by them, upon the Oath they have taken, and according as they credit or discredit the Evidence, or find cause, they indorse the Indictment *Billa Vera* or *Ignoramus*. It is a true Bill, or we are Ignorant, the latter concluding the Jury does not find the matter, or there does not upon Evidence appear a sufficient ground for the Accusation, that the partys Life or Reputation should be brought into Question or Dispute.

As for a Presentment, it is when of their own knowledge, or upon enquiry, the Jury themselves do take knowledge of Nausence or Offence to the injury of the Publick, which they think fit to have removed or punished, and of which they inform the Court to that purpose briefly in Writing without Form, viz. The nature of such Offence or thing, and the persons name and place who is the Agriever, or where the Nausence is, being a ground and matter whereon to form an Indictment, the Presentment differing from the Indictment in two particulars, viz. Its not being drawn up in

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due Form, and whereas the Indictment is commonly drawn up by the order of the Court, or the instance of some Prosecutor as is said.

The Presentment on the other hand is always originally the Act of the Grand Jury.

The form of the Oath Administred by the Court to the Grand Jury when they are to Enquire, &c.

You shall diligently Enquire and true presentment make of all such Matters, Articles and things as shall be given you in charge as of all other matters and things as shall come to your knowledge touching this present service; the Queen's Council, your Fellows and your own, you shall keep secret; you shall present no person for Hatred or Malice, neither shall you leave any one unpresented for Fear, Favour or Affection, for Lucre or Gain, or any hopes thereof; but in all things you shall present the Truth, and nothing but the Truth, to the best of your knowledge.

So help you God.

And now from what has been said it appears, That this important Office is branched two-fold, and the first is to preserve the innocent from the Disgrace and Hazards, which by malice or any sinister means they may be brought into, for by the express words of the words of the Statute of 5 Edw. 3. cap. 3. and 43 Edw. 3. cap. 3. it is said, That for preventing Mischiefs done by false Accusations, none shall be put to answer, unless it be by Indictment or Presentment of good and lawful people of the same Neighbourhood where such Deeds be done, and

and this no doubt may be taken to imply a Grand Jury.

The other Branch is to enquire after and give notice of all Nausances, Offences, Crimes and the like in the County for which they serve, that so Offenders may be brought to Tryal if they are forth coming, or if fled from Justice, may be proceeded against upon the Outlawry, and so Criminals punished according to their demerit.

A Grand Jury or Petty Jury where there is no Witness against the Prisoner for the Crime he stands indicted for, yet knowing him guilty of their own knowledge, may find it accordingly; and this especially in the Petty Jury appears pretty plain by the words spoken to them by the Court, for if no Witness appears by what the Court speaks to the Jury on this account.

C H A P. XXXIII.

Instructions for Fair-keepers and Toll-men in the ordering of their Office and Trust.

HAVING thus far proceeded in matters useful and very necessary to be known, I briefly go on to others in which many are ignorant.

And first of the keeping of Fairs; as for Fairs they are held by Royal Grants, and are limited to a time according to the Grant, Use or Custom, and any one continuing to sell Goods, Merchandise, Cattle or the like, longer than so he is warranted, forfeits double the value of the Goods, &c. so unwarrantably sold, and he that shall prosecute is to have a fourth part, the remainder going to the Queen.

All Fairs must be duly proclaimed by the Mayor, Sheriff or Lord of the Fair, and an orderly decency to be kept during the time it is held. In all Beast-Fairs there ought to be a Toll-man, one or more as the nature requires to receive Toll to reside there from Ten of the Clock in the Forenoon, till Sun-set, during the time of the Fair or Market, where such Toll under a Penalty of forfeiting 40 s. for every Default; and where any Horse, Mare, &c. is Toll'd, the Buyer and Seller must come before him, whereupon he must write down their Christian and Sir-names in a Book to be kept for that purpose, and their places of dwelling, with the Colour and Marks of the Beast under penalty of 40 s. for every such default. Also he is to have one credible Person as a Voucher, that the Horse, Mare, &c. is honestly come by, and to set down the price for which the Horse or Mare, &c. is sold, or the value is exchanged; and he that buys upon requiring it, may have a Note in Writing out of the Book, expressing the Contract, and the Toll-man's hand to it, for which 2 d. is due; and upon suffering a Sale to pass without a Voucher, unless he well knows the Seller himself, and every party making a false Testimony or Avouchment, and every Seller unknown, not bringing a Voucher, and not causing the same to be Entered, forfeits Five Pounds, one moiety to the Queen, and the other to the Prosecutor, and the Sale to be void: And notwithstanding such touching, if a Horse, &c. after appear to be stolen, the Owner, his Executors or Administrators claiming within six Months after the stealing, may redeem it at the price it was sold at, upon the proof of two sufficient Witnesses before a Justice of the Peace of the same County that it was stolen, &c. or before the Head-officer or Magistrate

jestrate of a Corporation, and the Price is to be such as the Buyer will testifie in such case upon Oath, he payed the party of whom he received the Horse, &c.

But if a Horse or Mare, &c. be stolen and not sold in open Market or Fair, and therein lawfully Toll'd, then the Owner may seize or replevy him in any place where he shall be found, and the Buyer left to seek his recompence where he may.

If any person buy in open Market, &c. Oxen, Calves, Lambs, Sheep, Goats, &c. alive, he may not sell them again alive, till such time as he has kept them at Pasture by the space of six weeks.

C H A P. XXXIV.

Clerks of the Market what is required to be done by them, with Penaltys and Forfeitures, &c.

THE Clerk of the Markets is very ancient, and the City of London has a Clerk of the Markets within the City of London, where the Queen's Clerk of the Market does not enter allowable by ancient Grants, Customs and Priviledges.

The Clerk of a Market's care is one respect to keep the Market in good Order, to Overse, Regulate or Complain of Abuses there to those in whose power it is to Redress them; also of Weights and Measures, and that convenient standing be provided, and other necessarys in recompence of what he takes of such as keep the Markets with Goods, Provisions, &c.

As for Corn-measure and other things to be measured this way, there shall be only the Winchester Bushel containing eight Gallons, and the party selling by any other, according to the 22 *Car.* 2. forfeits 40 s. and upon the Clerk of the Markets refusing to seal such Measure as shall be full Gauge, he for the first Offence forfeits 5 l. for the second Offence 10 l. and if the Queen's Clerk of her Market of her House, exact or take more Fees than is due, that is, more than a Penny for sealing a Bushel, a Half-penny for half a Bushel, and one Farthing for Measures of less proportion, he incurs the Penalty set down in the Statute of *Car.* 1.

A Brass Bushel is required to be chained to a Post, or publick place in the Market-place, at the charge of the Clerk or Person taking Toll for the use of such as come to the Market in their measuring, and in default thereof, a penalty of 5 l. may be leavied or sued for according to 22 *Car.* 2. cap. 8.

What person so ever keeping the Market, shall sell or buy Corn in Sacks or Bags, and not measure it, being required thereto, or in any other thing what ever, is liable to forfeit the said Corn, or to the value thereof, for the behoof of the party making complaint of such offence against the Statute 22 and 23 *Car.* 2. cap. 12. and upon complaint the Defendant is bound by the Oath of one or more Witnesses, to prove if he can before a Justice of the Peace, that he or they did buy or sell according to the Statute 22 *Car.* 2. and 23 *Car.* 2. or the forfeiture must be paid as by the latter directed, and upon the party or partys refusing so to do, it may be leavied by Distress and sale of Goods upon Warrant, under the Hand and Seal of

of one or more Justices, before whom the Conviction shall be, the one Moiety to the Informer, and the other to go to the Poor of the Parish, wherein such Offence shall be committed.

C H A P. XXXV.

The Duty and Office of a Constable, Head-borrough, Tything-man, &c. in the most material things to be by them observed in the Executing their Office, and discharging their Trust.

AS the Office of a Constable is very Ancient and much available, so it carries in it a great Power; for this Officer according to the *Saxon* Language in *England*, is call'd Coning, or Cyng, or Staple, as much as to say, a Stay or Prop to the King, or as it may be further considered to the Government, in seizing Offenders, and bringing them to Justice: And in this Office there are two sorts, tho' the Power in many particulars result to the same purpose, *viz.* High Constables of Hundreds, and Petty Constables of Parishes, Divisions or Precincts: The first of these are usually chose in the Countys by the Justices of the Peace, in their Sessions called, The General Quarter Sessions, having full power to Authorize them to execute the Office of High Constable, or to lay them aside for neglect, failure or misdemeanors in their Offices, as they shall find just cause, and place others in the stead of such as they shall displace; and more particularly, the High Constables

bles are to look after the petty Constables and Headboroughs in their respective Hundreds or Divisions, to see they duly keep their Watches and perform the other parts of their Office as they ought, and they are to be aiding to them as the case shall require, and to execute such Warrants and Precepts as are directed to them from the Justices of the Peace, in or out of their Sessions; so that the Queens Peace may be duly kept, and good Order remain in the Government so far as lyes in their power, or the nature of their Office requires; and to this end an Oath is Administred, both to the High and petty Constables, in which they are as it were directed, how they shall proceed in the execution of their Office, which Oaths the Justices have power to Administer, and first the Form of the High Constable's Oath is as followeth, viz.

You shall swear that you shall well and truly serve our Sovereign Lady the Queen, in the Office of a Constable, you shall see and cause her Majesty's Peace to be well and truly kept and preserved, so far as in your power lyeth. You shall Arrest all such persons as in your sight or presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or any other Breach of Her Majesty's Peace. You shall do your best endeavour, upon complaint to you made, to apprehend all Felons, Barretors, and Riotors, or persons riotously assembled; and if any such Offenders shall make resistance with force, you shall levy Hue and Cry, and shall pursue them till they be taken. You shall do your best endeavour that the Watch in and about your Hundred shall be duly kept, for the apprehending Vagabonds, Rogues, Night-walkers, Eves, Dropers, Scouts, and other suspected persons, and of such as go armed and the like, and that Hue and Cry be

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duly raised and pursued according to the Statute of Winchester, against Murderers, Thieves, and other Fellons; and that the Statutes made for Rogues, Vagabonds and such other idle persons as come within your Bounds and Limits, be duly put in Execution. You shall have a watchful Eye upon such persons as shall maintain or keep any Common-house or place, where any unlawful game is, or shall be used; as also to such as shall frequent or use such places, or shall use or exercise any unlawful Games there, or elsewhere contrary to the Statutes. At your Sessions, Assize, or Leets, you shall present all and every the Offences done contrary to the Statutes of the 1. 4. and 21 of James I. to restrain the inordinate bunting of Tipling in Inns, Ale-houses and other Victualing-houses, and for the repressing Drunkenness. You shall there likewise true presentment make of all Bloodshedings, Affrays, Outcries, Rescues, and other Offences committed or done against the Queen's Majesty's Peace within your Limits. You shall once every year, during your Office, present at the Quarter Sessions all Popish Recusants within your Liberty, and their Children above Nine, and their Servants, viz. their Monthly absence from the Church) 3 Jacobi 4. You shall well and duly execute all Precepts and Warrants to you directed from the Justice of the Peace of the County, or Superiour Officers. You shall be aiding to your Neighbours against unlawful Purveyances in time of Hay or Corn-Harvest upon Request. You shall cause all persons meet to serve by the day, for the Mowing, Reaping or getting in of Corn or Hay. You shall in Easter-week cause your Parishioners to chuse Surveyors for the mending the Highways in your Parish or Liberty, and you shall well and duly according to your Knowledge, Power and Ability, do and execute all other things belonging to the Office and Duty of a Constable, so long as you shall continue in the said Office.

By this Tennor of an Oath, a Constable may gain a considerable light into what he is to do in the Mannagement and Execution of his Office, being as it were an Epitome of what I shall hereafter set down more intelligible and plainly to be; but this Oath is often Administred in Abstract to a petty Constable or Tythingmen, &c. so that what I now Recite suffices.

The Petty Constable, &c. his Oath.

You shall swear that you shall well and truly execute the Office of a Tythingman of the Tything of B (or Headbourrough, &c.) Her Majesty's Peace in your Person. You shall keep and see it kept in all others, as much as in you lyeth. In the Presence of the High Constable, you shall be aiding and assisting to him, and in his Absence, you shall execute his Office according to your Power and Knowledge, till an other be chosen in your place, or you be legally discharged,

So help you God.

The High-Constables in their respective Hundred, are Conservators of the Peace at Common-Law, as are the Petty Constables in their respective Towns and Liberties, and have a large power to back and support them in the Execution of their Office, if they proceed within the Bounds of it; for it is so ordered, that if an Action be brought against a Constable, Headborrough, &c. or their Assistance, for any thing done by reason of their respective Offices, they may plead the general Issue, and give the special matter in Evidence, 7 Jac. 1. chap. 5. 21 Jac. 1. chap. 22. Wind-
gar's Abridg. Stat. Tit Evidence, &c. And if it so

happen, any Action be brought against one or more of them, it is so provided, That it shall be layed in the County where the Fact commenced, and if the Verdict pass for the Defendant, he to have double Cost, and this to be recovered as other Defendants recover their Cost, by 7 Jac. 1. chap. 5. 21 Jac. 1. chap. 12. *Windg. Abridg. Stat. Tit Evidence.*

For indeed a Constable legally chosen, is compell'd to serve the Office, being a fit Man, able of Body and in substance, and it would go hard, if for every trivial slip he should run the risk of being ruined by vexatious Suits; for if a Constable, &c. legally Elected to the Office do refuse to serve and take the Oath, unless a Quaker, and then according to a late Statute for taking the Oaths, &c. his Affirmation will hold good in lue of an Oath, he may be bound over by the Justice to the next Sessions or Assize, and there prosecuted for a Contempt.

But passing over these, I now come to direct the Constable, &c. in the more material parts of his Office, wherein he may readily order and mannage his Affairs in discharge of his Duty, without running into Ill conveniencies or Hazards, that may bring trouble and charges upon him; for whatever the fancy of some is, a Constable is no more a privileged Man than another, where he exceeds the bounds of his Office in unaccountable Actions; and the first particular I shall offer is his duty in serving of Warrants, directed to him by Justices, in Commission for the Peace, or other Maj-strates, having power to grant Warrants, and how far he may be safe in this, and where he may Err.

C H A P. XXXVI.

The Office and Duty of a Constable Head-borough, &c. in Serving or Executing Warrants directed to him by Justices in Commission for the Peace, &c.

IF a Warrant be brought to a Constable or other sworn Officer, his best way is to charge the party making the Plaint to assist him in the Queen's Name, and shew him the party or parties mentioned in the Warrant, unless himself be well acquainted with him or them, least a mistake by the names agreeing, may run him into an Error in taking the wrong party; and if he be a sworn known Officer, he may refuse to shew his Warrant, but must declare to the party, he goes to Arrest what is therein charged against him; but it is otherwise where a Warrant is given to be served by one, who is not a known sworn Officer, as a Justices Servant, &c. for thereupon demand he must produce the Warrant, or the party on whom it is served may refuse to obey and lawfully resist.

If a Constable Arrest a Man or Woman in the Queen's Name, pretending he has a Warrant, and at that time has none, but presently goes and gets one, the party may bring an Action of false Imprisonment against him, and recover such Damages with cost as shall be awarded, *Cook* 6. 69.

If a Constable have a Warrant against *A. B.* the Son of *L. B.* and he takes into his custody *A. B.* the Son of *R. B.* tho' he happen to be the Offendor against whom the complaint was made,

yet he goes from his Warrant, and doing thereby unjustifiable Action, there lyes an Action of false Imprisonment against him, 10 E. 4. fol. 12.

If a Constable Arrests a Man with a Warrant from a Justice of the Peace, and having him in Custody, takes his word to come again an other time, by his so dismissing him, the Warrant is void and cannot be served again: But if a Rescue be made, or the Prisoner Escapes without the Officer's consent, then upon fresh pursuit, he may take him with the same Warrant as often as he is rescued or escapes, and may pursue him into an other Town or County, though he be out of sight, *Crompt.* 214. and 184. *Cro.* 53. 144.

If a Justice send a Warrant for a matter wherein he hath Jurisdiction, tho' he goes beyond his Authority, yet the Officer is bound to obey it, and his producing his Warrant saves him harmless, the Justice being then to answer for it; but on the contrary, if a Justice issues out a Warrant for a matter out of his Jurisdiction, where he is no Judge of the cause, the Constable is not bound to obey it, for he is bound to take notice of the Jurisdiction and Authority of the Judge, and where the Justice, as is said can be no Judge of the matter charged in the Warrant, he is no more bound to him than if he had no Commission, 14 H. 8. *Co.* 10. 76.

If a Warrant be directed to an Officer to serve on a person for ordinary matters, the Warrant not specifying the cause, but only to answer to all such matters as shall be objected against him or her, this is held to be an illegal Warrant, and the Officer that executes it lyes liable to an Action of false Imprisonment, *Cook's Institutes, part 4. Tit de Frangent Prison.* However for reason of state, Warrants for Treason, or such as are granted by the

the Lords of the Privy Council, Secretaries of State, or the Lord Chief Justice of *England*, and these need not set forth the cause by reason they are usually granted on matters of great importance, where secrecy is required.

If any party be taken by a legal Warrant and make Resistance, the Constable in the Queen's Name may command Assistance, and if the resisting party be Beaten or Wounded, the amends is in his own hand for opposing the Queen's Authority; but if the Constable, or any of his Assistance be Beaten or Wounded, the party is indictable, as likewise liable to an Action at Common-law, and if any of them die of the Beating and Wounds within 12 Months, it is Murder.

Persons refusing to Assist a known Swearer, charging them in the Queen's Name, lye liable to be bound over to the Sessions, and fined at the discretion of the Justice. And the like for those that shall Contemn or abuse a Justice's Warrant, by Tearing, Treading under Foot, or any way defacing it, &c. over and above being bound to the good behaviour, for it is a contempt against the Queen's Process, *Crompt. 144.*

C H A P. XXXVII.

The Office of a Constable, &c. How it ought to be Executed, relating to Affrays, &c.

IF a Constable be present at an Affray, he may command the standers by in the Queen's Name to assist him in keeping Peace, and upon complaint of the Constable, the Inquest may indict the party refusing, and he fined by the Justices at their Sessions for refusing to do his Duty.

If a Constable, or other such like Officer be present, when one Man or Woman assaults an other, or with violent words threatens to beat or kill any one, and be in a fury ready to break the Peace, in such case these Constables, Hedborroughs, &c. may commit the Offenders to the Stocks, or some other safe place of Custody, till he can carry them before a Justice, who may upon complaint compell them to find Sureties for the Peace or good Behaviour, and for want of such Sureties commit them to Prison, 3 Hen. 4. 9. and 10. *Bacon's use of the Law, &c.*

Where any Affray is like to be, the Constable in the Queen's Name may command them to depart on pain of Imprisonment, and if they refuse, he may take them into Custody, or indict such as refuse, if any harm be done at the next Sessions; and if a Constable be present at an Affray, and does not his endeavour to prevent it, and seize the Offenders, he lyes lyable upon a presentment of the Jury to be Fined, *Dalton's Justice of the Peace*, fol. 4, 5.

A Constable may resist the Affrayers after Proclamation made to depart, and compel them to it by force; and if he or any of his assistance be Wounded, they have their Remedy by Statute and Common-law, and if killed, or dying of their Wounds, it is Murther in the Affrayers, *Lamb. 135. 1 Hen. 7. 7. 3 H. 7. 10.*

If the Affrayers be in a House, the Doors locked or bolted, the Constable may break them open to part the Affray and keep the Peace, tho' none have taken hurt; and if they fly into an other House, the Constable upon fresh pursuit may break into that House to apprehend them, and so till they shall be taken, *Lamb. 125. 7 E. 3. 19.*

If any be dangerously hurt in an Affray, though the Constable be not present at the Affray, yet may he seize the Offenders and carry them before a Justice of Peace, who is to require Sureties of them, or the Wounds being supposed Mortal, to commit them to Prison till it be certified by Chirurgeons or Physitians, whether the party will live or dye, *Dalt. J. P. c. 8. fol. 33.*

After the Affrays is over, the Constable not being present at it, cannot seize them without Warrant, unless some one be dangerously Wounded, and much blood drawn.

If Affrayers escape into an other County or Franchise, a Constable upon fresh pursuit may seize them there, and carry them before a Justice of the Peace of the same County to find Sureties for the Peace, but then he must see the Affray.

All Contests are not properly Affrays, for to make it such, there must be some blows given or offered to be given, for hasty Words will not warrant an Affray, unless they threaten to Beat, Kill or Wound one another, and in such case a Con-

stable may apprehend the Offenders, and carry them before a Justice to find surety for the Peace, and yet such threatening words is not properly to be taken for an Affray, *Dalt J. P. c. 8. fol. 34. 38 Hen. 8.*

C H A P. XXXVIII.

The Constables Office relating to Arrests or Escapes of Prisoners, Fellons, &c.

IF a Constable or any Sworn Officer for the Peace have Arrested a Fellow, or taken any person into custody on suspicion thereof, and he is conniving at his Escape, or giveth him leave to go out of his custody at liberty, so that he does escape, it is no Felony in the Prisoner, but it lyes upon the Constable, and he must answer for it; but if the Prisoner accidentally escaped without the Constables consent, he is then guilty of Felony, and the Constable fineable for his negligence.

If a Constable by his negligence let a Prisoner in his custody have opportunity to make away with himself, by Stabing, Drowning, or any violent Death, he is Fineable, *Dalt. J. P. c. 106. fol. 272.*

Where Felony is committed, and one is taken by a Constable on suspicion of committing it, tho' afterward the Constable be very well satisfied he is innocent, yet may not he discharge him without carrying him before a Justice of Peace; for being once taken into custody, he must be delivered by due course of Law; nor may a Constable suffer the compounding any Felony, for if it be

be done after he Arrests the party, or before he is to declare his knowledge of such compounding before the Justice, or for conniving to extenuate the Fact, and set the Prisoner at Liberty, he is fineable, and some hold he may be brought in as an Accessary.

A Constable may use all lawful means to secure his Prisoner, as setting him in the Stocks; or putting Irons on him if he be unruly, till he can carry him before a Justice, or Pinion his hands behind with Cords to prevent his Escape in carrying him thither or to Prison.

If the Goaler will not receive a Prisoner of a Constable, where he is lawfully committed, he must not however let him go, but bring him back to the Town or Village where he was taken, or where the Constable dwells, and the Town where he was taken shall be at the charge of keeping him until the next Goal delivery, to be raised by way of Tax amongst the Inhabitants, if the Prisoner has no Money or Goods to defray it; and in such case the Goaler shall be punished by the Justices in their Sessions or Assize for his refusal and contempt, if there be much charge in carrying a Prisoner to Goal, the Inhabitants where he was taken may be obliged to contribute to it, to be leavied by such of the principal Inhabitants, as shall be thereunto appointed at their Discretion.

C H A P. XXXIX.

The Office of a Constable, &c. in relation to Hue and Cry, and how he must discharge his Duty therein.

WHEN a Hue and Cry is leavied and issued out, whether for Robbery, Murther, &c. when it comes to the hands of a Constable, Headborough, Tythingman, &c. they must forthwith make diligent search in all suspected Houses, Barns and Out-houses, and other Houses at their discretion, and places within their Liberties or Precincts, and have power to stop any suspected person, as in search or pursuit they shall find or suspect to have done the Fact, comparing him or her, or their Horses with the discription given in the Hue and Cry, and if cause be found to carry the party before the next Justice of the Peace in the County where taken, there to be strictly Examined, where he or they were at the time of the Fact committed; and for the neglect of this duty, the Officer lyes liable to be fined by the Justices in Sessions, and search being dilligently made, must without delay send it to the next Constable or Officer of the Peace, unless the party or parties be taken who are known to have committed the Fact mentioned therein, *Dalt J. P. c. 28. fol 75.*

Where a Robbery is committed in a Hundred, and the Hundred is sued for it, though the Damages are recovered against one or two of the said Hundred, yet they are to bear the charge, but the rest must proportionably contribute according to their Ability, and two Justices of the Peace, one

to be of the *Quorum*, dwelling in or near the said Hundred, may set a Tax on every Parish within it, and then it is the duty of the Constable or Tythingman of each Parish, to settle the gross Tax proportionable on the Inhabitants in particulars, and may upon refusal of payment make distress and sale of Goods, delivering the Over-plus on due Appraisement to the Owner, and the Money so collected is to be put into the hands of the Justices or some of them that made the Rate within ten days after, according to 27 *Eliz.* cap. 13. &c.

If fresh pursuit on the Hue and Cry shall cease in any Hundred, it is liable to pay half the Damages to the Hundred wherein the Robbery was committed, to be recovered by Action in any of Her Majesty's Courts at *Westminster*, at the Suit of the Clerk of the Peace for the County; and tho' in the mean time he die or be changed, the suit shall not fall or abate, and when so recovered, it is to be levied on the Inhabitants by way of Tax as the former, 27 *Eliz.* chap. 13.

If any one of the Robbers be apprehended and brought to Justice and Convicted, it saves the Hundred their Money, because it is looked on, they have regard to watching the Roads for the secure Travelling of Passengers; also when the Action is not brought within one year after the Robbery committed.

The Robbery must be committed in the Queen's High-way, between Sun-rise and sun-set, and Oath made of it with the sum lost before the next Justice of the Peace, with all convenient speed: The Hue and Cry thereupon issued out, must be made with Horse and Foot, or else it is held illegal, *Bracton Book 3 fol. 10. 121. Dalton J. P. fol. 133.*

Who so goes not Armed and fitly prepared at the command of the Sheriff or Constable, when the

the Hue and Cry is issued out (to arrest the Robbers or Fellons) after Attaindure may be severely fined and imprisoned, *Westm. 1 chap. 9. Cook's second part of Institutes, fol. 172.*

C H A P. XL.

The Constables Office, &c. in what more particularly relating to the Conservation of the Peace.

THough a Constable may do his endeavour to keep the Peace, yet if it be broken, he cannot take surety for it at the request of any one, *H. 7. fol. 18.*

Before a Warrant of the Peace be served, the Constable or other Officer ought to acquaint the party with it, and charge him in the Queen's Name to go along with him to put in Sureties if required; and if he refuse so to do, then to compel him to do it, and if it be unreasonable time that the Justices be in Bed, or not to be found, he may secure him under a Guard or in Prison if he will be so Rigorous, till he can convey him before a Justice, and is not bound to run up and down from place to place with him, nor loose his time in staying till the Prisoner can send for Sureties, but may immediately carry him before what Justice he pleases, and not submit it to the Prisoners Election, nor to that of the party that makes the complaint, unless the Warrant be special.

If a Constable have a Warrant of the Peace against a person to find Sureties, where the matter is Bailable, the party having notice of it, may supersede

perfeide it by puting in Sureties before another Justice, to answer the complaint the next Sessions, and then if that Justice, being of the same County, send a *Supersedias* to the Officer to discharge further Surety, and he notwithstanding Arrest the party to find Surety or Imprison him, he may bring his Action of false imprisonment against the said Constable, or for the like contempt of the Officer, upon a *Supersedias* out of Chancery, or the Queen's Bench; for a *Supersedias* is a discharge of the former Warrant, *Dalt. J. P. chap. 69. fol. 168.*

Upon notice given to a Constable or other Peace Officer, or if it be upon his or their own knowledge, that a Man and Woman adulterously Cohabit together, or live in Fornication, being of Evil report, he may search any suspected House for them, wherein he is informed or knows they are in the Night time, and there apprehend them, and carry them before a Magistrate to find Sureties for their good Behaviour, 13 *H. 7. 10. Dalt. J. P. chap. 75. fol. 189.*

If any one Abuse or Affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound over to his good Behaviour for such his Offence, and fined before the Justices in their Sessions as they see fit upon proof, *Sc. Fitzbar 207. Crompt. 135.*

All injurious force and violence used against the Person, Lands, Goods or other Possessions or Chattels of a Man or Woman is held a breach of the Peace, whether it be by threatening Words, furious Gestures, or bodily Force, *Dalt. chap. 3. fol. 9.*

Note, Upon any Disputes in an Ale-house or Tavern, &c. about paying the Reckoning, and the parties offer to make their Escapes without paying, if there be no Swords drawn, beating, Wounding

ding or visible breach of the Peace, the Constable is not bound to go tho' sent for, or if he does, is no ways bound to stop the Persons, or is it warrantable for him to Arrest and carry them before a Justice, unless a Warrant be put into his hands, for this is only a Debt, and the party agrieved must bring his Action for the credit he gave the Victuals or Drink, &c. being freely delivered by his consent, and these Constables that are over officious to trouble themselves this way, may bring themselves into trouble, and only be laughed at by these that set him on work, and counted their stalking Horse.

No Warrant, Writ or Process shall be served on the Lord's-day, commonly called *Sunday*, except for Felony, Treason or the breach of the Peace, for otherways the service shall be void, and the Justice may discharge the Warrant without examining the partys, and the party serving it shall be obliged to answer Damages, as if no Warrant had been to the party who is Arrested and Detained by such a Warrant on the Lord's day, 29 Car. 2 chap. 7.

C H A P. XLI.

The Office of a Constable, &c. Relating to the strict Observance of the Lord's-day.

IF any Butcher kill and sell any Victuals on the Lord's-day, or any one do it for him, the Constable by Distress and sale of his Goods may levy 6 s. 8 d. upon Warrant from a Justice, &c. but the complaint or information must be made within

within six Weeks, and the party thereof convicted before a Justice of Peace, Mayor, chief Officer, upon their own view, Proof of two Witnesses, or the partys own Confession, and they may at their discretion gratifie the Informer with the third part of the Penalty, 3 *Car. 1. chap. 1. Dalton's J. P. chap. 50. fol. 134.*

If any on the Lord's-day be present at, or keep any Shooting, Wrestling, Ringing of Bells for Pleasure, Bowling, Church-Ales, Wakes, Masks, or any Games, Sports or Pastimes whatsoever, they shall forfeit 5 s. if above the Age of Fourteen, if under Age, 1 s. to be paid by him or her that has the Government of the party, to be leavied by the Constable on fail of Goods taken in distress by Warrant from a Justice of Peace or chief Magistrate; and for want of such Distress, the Offender to be set in the Stocks for the space of three Hours, and any Carrier going by way of Traveling with his Horses this day, or any Carrier, Wagoner or Wayn-man, going with any Cart, Waggon, Wayn, or Drover with Cattle, forfeits 20 s. for every such Offence, to be leavied by Distress and Sale of his or their Goods if charged and duly convicted, within six Weeks after the Offence committed, and the Money shall be had to the use of the Parish where the Distress is first made; for tho' they pass through several Parishes, yet are they to pay but 20 s. for one Journey, 3 *Car. 1. chap. 1. Dalr. chap. 50. fol. 134.*

If any Bull-bating, Bare-bating enterludes, or other unlawful Games and Pastimes of the like nature be held in the Parish, or out of the Parish on the Lord's-day, upon Warrant to him directed, the Constable, &c. may leavy 3 s. 4 d. by Distress and Sale of the Offender's Goods, rendering the overplus to the Owner if any be, or set the

the party for want of such Distress in the Stocks for the space of three Hours, but then the party offending must be questioned within the space of a Month after the offence committed, 1 *Car. 1. chap. 1. Dist. f. P. 23. fol 63.*

None shall do any work by Labour or Business on the Lord's-day, Works of Necessity and Charity only excepted, but that the Offender if above the Age of 14 years or upwards shall forfeit 5 s. none shall cry and expose to Sale any Wares that day on pain to forfeit them, except Milk, and that before nine in the Morning, and after four in Afternoon: No Drover, Higler, Horse-courser, Butcher or their Servants, shall travel on the Lord's-day on pain of forfeiting 20 s. No person shall Travel on this day on Horse-back, or with Boat or Wherry, unless on extraordinary occasions to be allowed by a Justice of the Peace, or Head-officer of the place, under penalty of forfeiting 5 s. unless Boats of passage lately appointed; no Hackney Coaches to travel that day, unless such as are allowed by the late Act of his late Majesty K. William III. *Sc. For Licensing Hackney Coaches, &c. 29 Car. 2. chap. 7.* and penalties upon this Act are for the use of the poor of the Parish where they are leavied, or the Offence committed, saving the Justice or other Head-officer may reward the Informer if he thinks fit with a third part; and further Note, That the prosecution on this Act, must be made within 10 days after the Fact committed.

Dressing Meat in Inns, Cook-shops and private Families are not prohibited on the Lords-day by the Statute of 29 *Car. 2.* And for the better encouragement of the Mackaril Fishery, they are in their season to be sold on this Day, but before and after Sermon time only.

C H A P. XLII.

The Office and Duty of a Constable, &c. required about hired Servants, Labourers, &c. Rogues, Strolers, &c.

IF Labourers are wanting in Harvest or Hay-time, the party so standing in need, may require the Constable to cause such persons as he thinks fit to Mow, Reap, or do any work relating to getting in the Hay, and Corn-harvest, and they to be payed by the day according as they are able to perform; and if they shall refuse to work after they are requested thereunto by the Constable, he has power to set them in the Stocks by the space of two days and one Night, and upon the Constables neglect to perform his duty in this Case, he forfeits 40 s. *5 Eliz. chap. 14.*

Servants, &c. after the time of their work be expired, they being employed in Husbandry or any Arts appointed in that Statute, they shall not depart the Parish, City or Town where they last served to in another, without a Testimonial (that is in a Town corporate) under the Hand and Seal of the chief Magistrate and two Housholders there, and in the Country under the Hands and Seal of the Constable, or other Officers, and two Housholders of the said Town or Parish, where he or she last served; and the Minister is to receive two pence for Registering the said Testimonial, which is to be delivered by him to the party whose name is mentioned therein, according to the Statute of the *5 Eliz. chap. 4.* and the Testimonial is to run in this Form.

The Form of a Testimonial, &c.

Memorandum, That John Digle, Servant to John Dillson of Stretham, in the County of Surry Grazer, is Licensed to depart from his said Master, and is at full liberty to serve else where, according to the Statute in that case made and provided, in witness whereof we have hereunto set our Hands and Seals on the 2d. of September, in the first Year of the Reign of our Gracious Sovereign Lady Queen ANNE, in the Year our Lord God, 1702.

James Wade, Constable of Stretham.

Richard Timser }
John Noble } *Housholders there.*

Constables, Hedborroughs, or Tythingmen, neglecting to make search for Rogues or Vagabonds upon the Justices Warrant directed to them, or to appear at their Meeting, to give up their Account what Rogues, &c. they have punished, or sent to the House of Correction, or upon neglect to send such to the House of Correction, as by order of Warrant are Committed, the Justices at their discretion may Fine those so transgressing in a sum not exceeding 40 s. 7 Jacobi 1. chap. 4.

If any one not being an Officer shall apprehend a Rogue or Vagabond, and carry him before a Justice of the Peace, the Justice has power to reward the said person, by granting to him a Warrant under his Hand and Seal to the Constable or Tythingman of the place, through which he passed unapprehended, ordering thereby the said Officer to pay 2 s. for every Rogue so apprehended, and upon refusal of payment, the Justice may pro-

proceed against the Officer pursuant to the Stat. 1 *Jacobi* 1. chap. 7. and constrain him to pay his forfeiture limitted by the said Statute; and out of it to allow the said 2 s. with charges for loss of time, as to him shall seem meet, 1 *Jacobi* 1. 7. 14 *Car.* 2. chap. 12. and considering Constables, Tythingmen, &c. are at much charge many time in releaving and carrying with Passes such as come to their hand, the Church-wardens, Overseers of the Poor, and other Inhabitants, may make a rate to Tax the Inhabitants of the Parish, who are liably chargeable by the Stat. 43 *Eliz.* to be confirmed under the Hands and Seals of two Justices of the Peace, and upon refusal of any to pay the Constable, may by Warrant leavy it by Distress and Sale of Goods, returning the overpluss to the Owner, if any such there be, 4 *Car.* 2. chap. 12.

As for Rogues or Vagrants of both Sexes, they are under severall Circumstances or Denominations, and that an Officer may know who are such, and who not, viz. all Scholars and Sea-faring-men that beg, all wandering Persons that use unlawful Games, subtil Crafts and Plays, and such as pretend to have skill in Phisognomy, Figure-casters or Fortune-tellers, Proctors, Patten-gatherers, unless such as are impowered to do it by Letters Pattens under the Great Seal, upon the account of losses by Fire, Collectors for Goals, Prisoners or Hospitals, wandering abroad on that occasion without sufficient Warrant to Authorize them; all Fencers and Berwards, Common Players of Interludes, Minstrels, Fiddlers, if so they be found wandering abroad.

All Labourers that wander abroad without the limits of their resp^tive Parishes, and refuse to work for such Wages as shall be reasonably taxed, having no other visible way to maintain themselves,
all

all such as go with general Pass-ports, not directed from Parish to Parish.

All Inglers, and such as use Tricks by slight of Hand, Artifts, Tinkers, Pedlars and petty Chap-men, also Glas-men, wandering abroad unknown, and without a sufficient Testimonial; all those that counterfit themselves *Egyptians*, not Fellons upon the Statute made in that case; all persons delivered out of Goal that wander begging for Fees or otherways begging; all such as pass and repass to and from the *Bath*, for the recovery of their health, not pursuing their Licence; all Soldiers and Mariners that beg and counterfeit a Certificate of their Commanders, that is to say, the parties either Male or Female, being above seven years, and so transgressing as aforesaid, and those if they do not beg, yet if they wander and loiter about without any Pass-port, or sufficient Testimonial, are accounted Rogues and Vagabonds. Those that beg in their own Parish, or in the High-ways without the Appointment or Licence of the Overseer, are liable to be sent to the House of Correction.

And to Authorise the Constable, Tything-man, and other Officers to apprehend and order them as aforesaid, see 39 *Eliz. chap. 4.* and 17. 43 *Eliz. chap. 2.* 21 *Jacobi 1. chap. 28.* 7 *Jacobi 1. chap. 4.* 5 *Eliz. chap. 4.* *Dals. chap. 47.* fol. 123. 125. 124.

C H A P. XLIII.

The Constable's Office in disposing of the Wives and Children of Rogues, Vagabonds or sturdy Beggars, &c.

THe Wife of such sturdy Rogue or Beggar, the Childen being under seven years of Age, must be placed with the Husband, and if he be dead, then the Children to be placed with the Wife in the Parish where she was Born or last dwelt, and the Vagrant Children exceeding seven years of Age, must be sent to the place of their Birth. And if with Children under seven years of Age, the Vagrarant Parents are placed at the place of the birth of the said Parents, or in the place where they last dwelt, if afterward the Parents, or either of them happen to die, or run away, leaving the said Children; yet they once settled, must still remain in that settlement, and ought not to be sent to the place of their Birth, tho' they have attained to the Age of seven years or upwards, according to 29 *Eliz. chap. 4. Resolv. Judges Sect. 4, 5. Dal. J. P. chap. 47. fol. 135.*

The Vagrant Wife must be sent to her Husband, tho' he be no other than a Servant in any Parish or Town, and a Rogue or Vagrant not able to assign any place of Birth, if he have a Wife and Children under seven years old, they must be sent with the said vagrant Rogue, to the Parish or Town through which they by sufferance last passed unpunished, and the Children relieved with the work of their Parents, tho' they be committed to the House of Correction, if it be possible they thereby can relieve them.

C H A P. XLIV.

The Duty and Office of a Constable &c. relating to Ale-houses, Inns, &c.

HE that without a Licence shall presume to keep an Ale-house, selling Ale or Beer, forfeits 20 s. to be levied by Distress and sale of Goods, and converted to the use of the poor of the Parish, and this to be done by the Constable and Church-wardens by Warrant from a Justice of the Peace of the same County, and upon Distress and Sale, the Overplus to be returned to the Owner of the Goods if any such remain, and a Constable, &c. refusing or neglecting to execute any such Warrant to him directed, forfeits for such his Contempt 40 s. upon failure of Goods to leavy the Distress upon such Ale-house-keeper, the Constable empowered by the Warrant aforesaid, the Constable may openly whip or cause the Offender to be whiped in his presence. The Goods upon Distress are to be sold in three days, the Offence to be proved before the Justice of the Peace who grants the Warrant, and the Justice upon default of the Constable, in executing his Office relating to the Premises, may commit him to Goal, till he causes the Offender to be Whiped or pay the 40 s. to the use of the Poor, 3 *Car. 2. chap. 3. Dalt. J. P. chap. 7. fol. 31, 32.*

If a Warrant be directed from a Justice of the Peace to a Constable and Church-wardens against an Inn-keeper, Ale-house-keeper or Victualer, for suffering excessive Drinking or Tipling in his House, as any Man so Tipling being Drunk, and he neglects to do his Duty, he forfeits 10 s. to be leavied

leavied by Distress and Sale of Goods, to the use of the Poor of the Parish. Any person for excessive Tipling is to pay 3 s 4 d. or to sit in the Stocks four hours; for being Drunk 5 s. or to sit in the Stocks six hours; if the Money be not paid, or there be no Goods belonging to the Offender, whereon Distress is to be made, and the Inn-keeper, Ale-house-keeper, or Victualer, for suffering such offences in his House, upon due proof, forfeits 10 s and the distress made must be sold in six days, if the Money of the Distress be not in the mean while payed; and if such Ale-house-keeper, Victualer, &c. refuses to sell a full Ale-quart of the best Ale, or Beer, for one Penny, or two quarts of small Beer for a Penny, or selling less than such measure, the party so offending forfeits 20 s. for every Offence, to be leavied as aforesaid; and if in these particulars no Distress be found, or if the Officer neglects within 20 days to certify the default to the Justices, the Officer forfeits 40 s. to be leavied by Distress and sale of Goods to the use of the Poor, by Warrant to be directed to any indifferent person, under the Hands and Seals of one or two Justices of the Peace; and for default of such Distress, the Justice may send the Offenders to Prison, there to remain till the forfeitures are paid, pursuant to the Statute in this case made and provided.

C H A P. XLV.

The Office of Church-wardens of Parishes throughout England, &c. with particular directions in their safe executing and discharging the great trust reposed in them.

THe Church-warden's Office is very Ancient, tho' it is not so expressly found by that name, yet the thing is to be found ever since Christian Churches were tolerated by the influence of Princes, and they are now taken at Common-Law in the manner of a Corporation, 12 *Hen. 7. ult. viz.* Church-wardens at Common-Law are enabled by the name of Church-wardens to take Moveable Goods or Chattels, and to sue and be sued at Law as to what relates to Goods for the use and profit of their Parish, and their care is to preserve the goods of the Church, *viz.* the Communion Plate, the Books and other Ornaments of the Church, as they find them upon coming into their Office.

They are to see that their Parishioners duly resort to the Church on the *Lord's-day* and *Holy-days*, and continue there the whole time of Divine Service, and see Decency and order kept, and may present such as do otherwise after due Admonition, unless a reasonable cause hinder the parties from coming to Church, and such presentment must be made to the Ordinary of the place according to the Canon, 5 *Edw. 6. cap. 1.* And those that absent from Church without lawful cause are to pay 12 *d.* or they may be presented by the Church-wardens in the Ecclesiastical Court, but then must not pay 12 *d.* 1 *Eliz. cap. 1. Hob. Rep. f. 97.*

If any are found tipling in Inns or Alehouses, in the time of Divine Service, they forfeit 3 s. 4 d. more for tipling, beside the 12 d. for absenting the Church, and he who suffers it in his house, forfeits 10 s. to the use of the poor, 4 *Fac. i. cap. 5.*

The Church-wardens, Questmen and their Assistants shall suffer no Plays, Feasts, Banquets, Suppers, Church-Ales, Drinkings, Temporal Court-Leets, Lay-Juries, Musters or any other prophane usage to be kept in the Church, Chappel or Church-yard, nor the unseasonable Ringing of Bells, superstitiously on Holy-days, or Eves abrogated by the Book of Common-Prayer; neither the Minister or Church-wardens are to suffer a man to Preach in any Church or Chappel without shewing his Licence that he is sufficiently Authorized thereto, *Can. 50. 58.*

The Church-wardens and Questmen are to see that the Peace be kept in the Church, and that all persons excommunicated are kept out of it.

All Persons appointed by the Act, 25 *Car. 2.* to take the Oaths of Allegiance and Supremacy in the respective Courts, where they take the said Oaths, they shall first deliver a Certificate under the hands of the Minister and Church-wardens, that they have received the Sacrament of the Lord's Supper, as in the said Act appointed, and make proof thereof by two credible Witnesses at least upon Oath.

C H A P. XLVI.

What relates to the Office of a Church-warden, as to the Church, Bells, Presentments, Seats, and some other matter.

Church-wardens have Power, as being a kind of Corporation to take by the name of Church-wardens, moveable Goods and Chattels, and to sue and be sued at Law concerning such Goods for the use and benefit of the Parish; but they may not purchase an Estate of Land by the name of Church-wardens, for if a Fee offment be made to the use of the Church-wardens of C. the use is void, for they have no capacity to take any such Purchase, *Finch, Lib. 2. c. 17. p. 179. Roll's Case, 1 part f. 393.*

Neither can Church-wardens prescribe to have Lands to them, or their Successors; for they are not a Corporation to have Lands, but only for the Goods of the Church.

If any Man hang up a Bell in the Church-steeple, or make a Pew in the Church, and neither make any Word or Writing thereof by such an Act, the Bell or Pew is dedicated to the Church, and may not be removed again, 11 *Hen. 4. 12. 8 H. 7. 12.*

The Church-wardens at Common-law have no Action to recover any thing they never had, but if any Goods or Ornaments of the Church be once in their custody, then may they maintain an Appeal of Robbery against any that shall steal them, or an Action of Trespass against any that shall wrongfully take them away, altho' it be the Parson or Vicar, and what damages shall be so recovered, must go to the use of the Parish, and not to their own uses, 27 *H. 6. 30. and 34. 11 H. 4. 12.*

If a Bell be broken, the Church-wardens may take it down and have it new cast, and may have an Action against the party who shall break a Bell by Ringing, or otherwise the damage recovered to be to the use of the Parish.

Church-wardens may not give or impair any of the Goods of the Church, without the consent of the Side-man or Vestry; for if they do, the Parishioners may chuse new Church-wardens, who may take an Account of their Predecessors, and bring an Action against them if cause be, and if an Organ be taken out of the Church, the Church-wardens may sue the party that took it, but the Parson cannot, for it is none of his Goods, but the Goods of the Parish; but if any thing of the body of the Church, or the Church-yard be spoiled, there the Parson or Vicar is concerned, and not the Church-wardens.

If the Church-wardens shall present any person in the Ecclesiastical Court, for being a Scolder, Railer or common Disturber, unless this happens in the Church or Church-yard, there lies a Prohibition, for otherwise it belongs to the Leet and not to the Ecclesiastical Court.

As for Seats in the Church, those that are in the body of it belong to the Ordinary of the Diocese to dispose of by common right; and he may place or displace, unless in some cases where people and their Ancestors in right of a Mansion-house, have possessed such a Seat time out of mind, for here is prescription for a reasonable consideration; but if he neglects the Pew, lets it run to ruin, and takes no care to repair it, then the Ordinary may seize the Pew into his hands.

If there be a custom in the Parish, that 12 of the Parishioners may chuse Church-wardens, and the Church-wardens have power to Erect and Re-

pair Seats in the body of the Church, and place such in them as they think fit, and the Ordinary goes about after to displace them, a Prohibition lyes, for the custom hath fixed the power of disposing the Seats to the Church-wardens, P. 16.
Fac. 1. B. R.

C H A P. XLVII.

The Duty of the Church-warden in relation to Books, Sacramental Bread and Wine, &c. and how Rates are to be made for the repairing the Church, &c.

CHurch-wardens have power to look after the Church-yard that it be kept Clean and Decent in repair, also that Books be provided, as Common-Prayer, Homilies, a Parchment Book for Registering of Christenings, Weddings and Burials, Fonts, Pulpits, Tables, Chests for Almes Communion Cups, Ornaments and other Furniture, which they are to provide, and Chests with three Locks and Keys for putting the same in; also Bread and Wine for the Sacrament according to the number of the Communicants, and for the charge of these they have power to rule the Parish, and all Rates to be done with the assent of the greater part of the Parishioners. and upon a general warning given before they meet for that purpose.

As to the body of the Church, the Ecclesiastical Court hath Cognizance of it relating to its Reparation, and a Man tho' he dwell in another Parish, yet having Lands in the Parish where the Church

is to be repaired, he shall be rated for those Lands, but if a Man live in one Parish and lease out his Lands which he hath in another Parish, reserving Rent, he shall not then be charged in the Parish where the Lands lye, because there is a Parishioner there to answer such Rates as shall be put upon the said Land.

If any petty Chapman take a Stall in the waste of a Mannor for Rent within the Market, for two or three hours every Market-day, being there held every Week, but his Habitation is in an other Parish, he then cannot be rated for the Reparation of the Church, and if rated a Prohibition will lye.

If a Citizen of *London*, whose business is in *London*, build a Country House and reside there at times, but hath no Lands in that Parish, yet he must stand to the Rate for the Reparation of the Church as an Inhabitant.

If there be a Chappel of Ease in a Parish where part of the Inhabitants have time out of mind been used to hear Divine Service, Marry and Christen, and bury at their Mother Church, yet are they compellable to pay as Rated to the repair of the Parish Church, and if some persons in a Parish are rated, and others omitted, if they are sued in the Ecclesiastical Court, they must plead the matter in this Court, for they cannot have a Prohibition, and a Rate may be made by the consent of the major part of the Parish to augment the number of Bells, as suppose there be five, and they design six to render them more Tunable, and this agreement of the major part shall bind the rest to pay the Money so rated, for the Ornaments of the Church, the rate ought to be according to a man's personal Estate, but for Reparation of the Church it must be upon the Lands.

By an Act 22 and 23 Car. 2. cap. 17. Intituled, *An Act for the better Paving and cleansing the Streets and Sewers in and about the City of London*; it is provided that a Rate shall be made for the Paving and Cleansing such ground before a Church that stands to any Street, Lane or Passage, as in that Act is mentioned more at large, which Money Rated is to be delivered to the Church-wardens, and they to pay the Work-men.

C H A P. XLVIII.

In what matters Church-wardens are equally concerned with Constables and Overseers of the Poor.

WHere Rates are to be made for the relief of the poor maimed Soldiers, Mariners, and carrying Prisoners to the Goal, the Church-wardens are to joyn with the Constables in making Rates for their relief, and to execute the Warrants for the same; as also in chusing Surveyors for the High-ways, and setting down days for the work, and in the oversight of the High-constables account for any Moneys they receive upon forfeitures about the High-ways, and with the aid of two Justices, one being of the *Quorum* they may compel the High-constables to account for, and pay what Moneys they have receiv'd forfeited for default of High-ways, and may execute the Justices Warrants for penalties and forfeitures, about cleansing the Streets and repairing the High-ways, 14 Car. 2. cap. 2.

And if it appear any party is buried in any other Shroud Coffin-lining, &c. but what is made
of

of Sheeps-wool, the Church-warden and Overseers of the Poor are to execute the Justices Warrants for leavying the Penalties of five pound upon the party's Goods, where such offence is made contrary to the Statute of 18 *Car. 2. cap. 4.* which money is to be employed to the use of the poor of the Parish wherein such offence is committed.

The Church-wardens in *London, Westminster* and Burrough of *Southwarth, &c.* upon every *Monday* or *Tuesday* in *Easter-week*, joyning with the Constable Overseers of the Poor, and Surveyors of the Highways, respectively in their Parishes, they or the greater number of them are to give notice, or call together such other Inhabitants of their Parishes, as have been formerly in the like Offices, they or the greater number of them, to make choice of or nominate and appoint two or more able persons being Tradesmen of their Parish, to be Scavengers for the Streets, Lanes, and other open passages of each Ward or Division within the said Parish, for the year ensuing, till others be settled and chosen in their places, 2 *W. and M.*

C H A P. XLIX.

*How Church-wardens ought to be circum-
spect in passing their Accounts, &c.*

Within a Month at farthest, after the Expiration of the Church-wardens year, they are to give up a just and true Account of their Receipts and Disbursements before the Minister and Parishioners, and at the going out of their Office, they are to deliver up to the Parishioners, what Money or other things which they have remaining.

in their hands, and of right belongs to the Church, that it may by them be delivered to the succeeding Church-wardens by Bill indented, *Can.* 89. and upon refusal so to do, they may be presented the next Visitation Court for such refusal, or an Action may be brought against them at Common-Law by the succeeding Church-wardens, and so they will be compelled to do it, and they shall be allowed in this Account their needful Disbursements and Expences about the Parish Business.

The Church-wardens, Sides-men and Quest-men, are not obliged to give in their Presentments above once in the year, where the custom or use has been no oftener, nor above twice in the year in any Diocess whatsoever, except it be at the Bishop's Visitation, for which presentments of every Parish, Church or Chappel, the Register of the Court, where they are to be exhibited, shall not receive above 4*d.* in one year, under penalty of being suspended his Office for the space of one Month, for every offence so committed; but the Church-wardens if they see good may oftener present, tho' not obliged to it, *Can.* 116. nor shall any Church-warden, Quest-man, or Sides-man be called or cited, except at the times before limited to appear before any Ecclesiastical Judge whatsoever, for refusing at other times to present any faults committed in their Parish, and punishable by the Laws Ecclesiastical, nor after exhibiting their Presentments at the usual times, shall they be farther troubled, except it appear that they willfully omitted to present some publick heinous Crime or Crimes, unless there be any just cause to call them for the explanation of their Presentments already put in; and in case of willful Omission, their Ordinarys may proceed against them in such sort in the Courts Ecclesiastical, as in cases of willful Perjury.

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One of the two times, Presentment is to be about a Week or Fortnight after *Easter*, at which time likewise the old Church-wardens are to leave their Office, and the new ones take place, but are not to be sworn till the old ones have given in their Presentments, and every Parson, Vicar or their Curates in their Absence, are to joyn in the Presentment with the Church-wardens. &c. and upon the refusal of the Church-wardens to make due Presentments, then may the Parson or Vicar, or in their absence their Curate make such Presentments to their Ordinaries at all such times as shall be True, Just, and Reasonable, *Can.* 113. 118. and so from time to time, care shall be had to keep good Order in the respective Parish or Parishes, that no Prophaneness, Debauchery, &c. be promulged.

C H A P. L.

A brief Account of the Articles commonly exhibited to the Church-wardens to ground their Presentments.

IN these Articles the Business of Church-wardens, as to what they have to do in relation to their Office, will plainly appear, *viz.*

Whether the Church and Chancel-Bells and Bell-ropes be in orderly Repair; the Ten Commandments, Lord's Prayer, and Creed, drawn out in fair Letters, the Queen's Arms set up, Assessment made for the repair of the Church, and what Persons refuse to pay the same.

If the Tombs, Monuments and Grave-stones be safely kept from breaking, &c.

If there be a Font, Communion Table, Carpet and Table-cloath, Flaggons with Caps and Covers, Bread and Wine, a Reading Desk, a Pulpit with a Cushion, and a covering for it; also a Surplice, Books of Common-prayer, Canons and Homilies, with all other Church Ornaments useful and necessary for Decency and Order.

If the Parsonage House and Out-Houses be in good repair, and the Church-yard well Fenced and kept from Swine, &c.

Whether the Parson, Vicar or Curate in all respects does his Duty, and whether the Parishioners of due Age do resort duly to the Church to hear Divine Service, make their Responses and behave themselves reverently.

Whether Inn-keepers, Vintners, or Victualers, do harbour any persons Drinking in their Houses in the time of Divine Service.

Whether any Marry within degrees forbidden, or be Swearers, Blasphemers, Adulterers or Drunkards; if any exceeding 16 years of Age does not receive the Lord's Supper, at least three times a year, whereof *Easter* to be one.

If any keep their Children unchristened, Women that come not to be Church'd, or any that bring not their Dead to be Buried, after the Service of the Church, or if any be Married without Banes or Licence, or at unlawful hours.

Whether the Alms-houses, Schools, Hospitals or Spittle, if they have any, be in good Order, well and Godly used, and nothing detained of right belonging to them; what Legaies have been given to pious Uses, and whether the Parishioners sit quietly and without Contention in their Pews or Seats, with some other Articles of lesser moment.

THE
OFFICE and DUTY
OF THE
Overseers of the Poor.

C H A P. LI.

The Office of the Overseers of the Poor, how to be qualified and chosen, where they may Act, and what degrees of Poor they are to have regard to in order to receive them.

THese Officers ought to be credible honest substantial Men; they are to be yearly chosen and joyned with the Church-wardens of the Parish, in the Oversight, due Regard, and care of the Poor; they are to be made choice of by two or more of the Justices of the Peace, one to be of the *Quorum*, who are enjoyed yearly at *Easter* or within a Month after, under their Hands and Seals to appoint four, three or two substantial House-keepers according as the Parish requires to be joyned with the Church-wardens, to oversee and look to the Poor in their Parish according to Stat. 43 *Eliæ. chap. 2. 21 Jac. 1. chap. 28.*

In this cause the major part of the Officers, without the remainder, may do any thing belonging to their Office, with the allowance and consent of them

them either in particular or general of two Justices of the Peace, one to be of the *Quorum*, and when they are not hindred by just occasions, the excuse to be allowed by two Justices of the Peace they are to meet on the Lord's-day in the Church Monthly after Evening Prayer, to consult of such matters relating to their Office, as may turn to the best advantage, and upon neglect without such reasonable excuse are liable to forfeit 20 s. for every default, 43 *Eliz. Wingate's Stat. Tit poor People.*

And if according to 43 *Eliz.* they be not regularly and duly appointed, then every Justice of the Peace, or head Officer of that Division forfeits 5 l. which may be leavied by a Warrant of Sessions, and employed to the use of the Poor, where such default is made.

Of Poor there are reckoned three sorts or degrees; and first, Those by Defect and Impotency, as the Aged and Decreped. being past their Labour.

The Infant, Fatherless and Motherless, not capable of being set on work.

Those naturally disabled, either in Wit or Members, as the Lunatick, Idiot. Lame, Blind, and the like, not being able or capable to work, and persons visited with grievous Sickneses and Diseases, tho' casually however, being for a time thereby rendered impotent.

These in their degrees are to be provided for, and the Overseers are to take care they have necessary relief, and such proportionable Allowances as shall appear convenient according to the measure and continuance of their Needs and Maladies.

Secondly, Such Poor by casualty, such as are casually disabled or maimed in body, as Labourers, Soldiers, Mariners, &c. Maimed or so disabled in their proper or lawful Calling; also the decayed Householder by casualty of Fire, losses at Sea,

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Sea, Suretyship, Robbery or Decay and loss in Trade, &c. a poor Man or Woman over charged or burthened with Children and not able to keep them by their Labour; all these and the like having Strength and Ability of Body, but no means whereby to sustain themselves or Children, are to be set to Work, but if the profit thereby arising procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the charge of the Parish in some reasonable proportion and measure, as their respective wants and necessities shall render them deserving in the just Opinions of the Overseers, under whose care they are: And Parents refusing to let them be so put Apprentice with good cause shewed for it, may by the Justice be bound over to answer the default, and the Children refusing may be sent to the House of Correction till they will comply. He or she must be bound by Indenture, and the word Apprentice specified in it, or else it is not binding: The Form of which for the better Transcript or Occasion by those that are ignorant of it, I shall here set down.

The Form of the Indenture of an Apprentice put out and bound by the Overseers, &c.

THis Indenture made the 20th. of September in the first year of the Reign of our most Gracious Sovereign Lady Queen ANNE, by the Grace of God, of England, Scotland, France and Ireland, Queen, Defender of the Faith, &c. Anno Dom. 1702. Witnesseth that R. P. and B. G. Overseers of the Poor in the Town of Nottingham, and R. M. Churchwarden of the same Town, by and with the consent of G. B. Esq; and B. C. Esq; two of Her Majestys Justices of the Peace, of the County of Nottingham, have by the

these presents, placed and bound A. E. being a poor and Fatherless Child as an Apprentice to M. H. of Nottingham aforesaid, Weaver, and as an Apprentice with him, the said M. H. to dwell from the day of the date of these presents, untill he the said A. E. shall come to the Age of 24 years, according to the Statute in that Case made and provided, by and during all which Time and Term, the said A. E. shall the said M. H. his Master well and faithfully serve in all such lawful Business, as the said M. H. shall put him the said A. E. unto, according to his Power, Wit, Ability and Honesty, and obediently in all things; shall behave himself towards his said Master, and all the rest of the Family of the said M. H. and he the said M. H. for his part, Promiseth, Covenanteth and agreeth, That he the said M. H. the said A. E. in the Art and Mystery of Weaving, in the best manner that he can, or may, shall Teach, Instruct or Inform, or cause to be Taught, Instructed or Informed, as much as thereunto belongeth, or he the said M. H. knoweth, and also during all the said Term, to find unto him his said Apprentice, Meat, Drink, Linnen, Wollen, Hose, Shews, Washing and all other things necessary or needful for an Apprentice; in Witness whereof we the said W. H. and A. E. have interchangably set our Hands and Seals the Day and Year of Date aforesaid.

☞ Note, in this Case the binding is as effectual to all purposes, as if the Children were of full Age, and did bind themselves by free consent of Indenture and Covenant, and they so bound may safely be received and kept by their Masters or Mistresses to whom they are bound only; if she be a Female, her Marriage will release her, tho' the time of her Indenture be not expired, as in all other cases of Indenture on that Account; and here otherways, neither Sex can be discharged from the

Master or Mistress to whom they are bound as Apprentices, but by four Justices of Peace at least in open Sessions, or else by the Agreement of the Master, &c. and Prentice under the Master's hand in Writing.

C H A P. LII.

How far the Overseer is concerned about settling the Poor, and what otherways relates, with some nice points relating to Bastards, &c.

BY the settlement of the Poor it is here meant, such as are likely to be troublesome and chargeable to the Parish or Place where they reside, and by 13 and 14 of *Car. 2. ch. 12.* the Overseers and Church-wardens making their complaint to any Justices of Peace, within four days after any person that is poor, and likely to trouble the Parish, cometh to settle in a Tenement, under 10 *l.* by the Year, two of the Justices, one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such Person to the Parish, where they last had a legal Settlement by the space of 40 days or more, unless security can be by them given, that the Justices shall approve of to secure the Parish, &c. from damages or charges that may ensue, and all persons agrieved have free liberty to appeal to the Quarter Sessions.

In Harveſt or Work-time, poor Persons settled in a Parish, having a Certificate under the hands of the Minister of the Parish, one Church-warden, and one Overseer of the Poor, declaring them Inhabitants there, may go into any of the adjacent or distant Parishes to Work, and if they do not return by reason of Sickneſs or any other Impediment, it ſhall not be accounted an Impediment, tho'

tho' they stay after their Work is done; and if any return from the Parish from whence they are removed, it is in the power of the Justice of the Peace to send them to the House of Correction, where they may be punished as Vagabonds, or at his discretion he may send them to a common Work-house, there to be employed at hard Labour; and upon the refusal of the Church-wardens or Overseers of the Poor to receive them, and provide them Work, &c. they may by the Justice be bound over to answer it at the Sessions or Assize.

In case of a Bastard-child born in any Parish, the Church-wardens and Overseers for the Poor, may in saving the Parish harmless, seize so much Goods, Profits or Lands to its use, belonging to the lew'd Mother, or reputed Father as will discharge the said Parish, or towards the discharging of it from such charges as may thereby incur, which is to be awarded and settled by two Justices of the Peace, and confirmed at the Sessions, and there an Order may be made to the Church-wardens and Overseers by sale, or otherways to dispose of the Goods as to them shall seem meet, and the profits and so much of the profits of their Lands as by Sessions shall be ordered, *Vide* if the Act 13 and 14 Car. 2. ch. 2. be Revived.

No Man is to be put out of his dwelling in a Town where he is lawfully settled, or to be sent to the place of his Birth, but a Vagrant Rogue, nor to his last Habitation; nor is he to be maintained by the Town, unless he be Impotent, but they ought to settle themselves to labour, if they are able and can get Work, and if Work cannot be gotten by them, the Overseers are to set them on Work and if after they wander Begging in other Parishes, they may be charged as Vagabonds, and sent to the place of Birth, *Dalt. J. P. chap. 84. fol. 209.*

If a Scholar in a Grammar School or University, be suspected to be an Incumbrance if he doth become Impotent, and there is like to be a charge to the Parish where he is, he may be sent to his Parents if he have any, otherways to the place where he was last legally settled before he came to School, *Resol. Judges 1633. Sect. 32.*

If a Woman be sent to the House of Correction and there Delivered, the Child must be sent to the Parish where the Mother came, and there relieved.

If a Woman be travelling and hath her Child with her, and is for any fault or breach of Statute apprehended and sent to Goal, altho' she be executed for her crime, the Child is not to be charged on the Parish where the Goal is, but must be sent to the place where it was Born if it can be known, otherways to the place where the Mother was apprehended, according to the opinion of Sir *Nicholas Hide, 3 Car. 1.*

If a Woman unmarried be hired Weekly or Monthly, or by the half Year or Year in a Parish, and there be gotten with Child, and so goeth into an other Parish, and there for two or three Months is settled in service, and being then discovered to be with Child, in this she must be settled in the Parish where she is, and must not be sent to the Parish where she before was, *Resol. Judges 1633. Sect. 12.* If a Woman be delivered of a Bastard-child in one Parish, and so departeth into an other Parish with her Child, in this case the Child after being nursed, is to be sent to and settled in the place where it was Born, and not to remain in the Parish with the Mother, *Resol. Judges 1633. Sect. 23.*

C H A P. LIII.

The Office of the Overseers of the Poor in making Rates, and how they must behave themselves therein, and of making and delivering up their Accounts upon going out of their Offices, &c.

THE Overseers for the Poor with the Churchwardens or the major part of them, for enabling them to perform the things they have in charge, may raise weekly or otherways by Taxation of every Parson, Vicar and the Occupier of Land, House or Tythes, Cole-mines or Underwoods, saleable within their Parish or Division, such a sum as in moderation they shall think fit; but the Rate must be allowed and confirmed under the hands of two Justices, one to be of the *Quorum*, and then may be leavied by distress and sale of Goods upon refusal of payment or neglect, by virtue of a Warrant from any other two Justices, one being of the *Quorum* rendering the overplus to the owner, and for default of distress, two Justices may commit the party to remain in Prison without Bail or Mainprize till payment be made, or the Justices think fit to discharge him, 43 *Eliz. chap. 2. Dal. J. P. chap. 73. fol. 148. Wingat's Stat. Tit. Poor People.* and these Rates ought to be made according to mens real and visible Estates within the place only, and not according to Estates elsewhere; and farther

Observe that a Parish in Reputation is deemed within this Law, for granting by a Parish very ancient having Officers in it; nevertheless there is a Town within this Parish, that for time out of mind at least, a long time hath been used, and reputed as a Parish, and hath all parochial Rights as Church-

Church-wardens, &c. in such a case it may be rated as a Parish towards the poor, *Huttons Report* fol. 93. and others.

And there must be care taken in Rating and levying this Tax, for it must lye on the Tenants occupying Land, &c. and not on the Landlord in or out of the Parish; for the first is only chargeable for the Land, *Bulst. 1 part Rep.* 354.

Any person having a full tenth in a Parish may be rated a tenth part, *Resol. Judges 1633. Sect. 33.*

If a person occupy Land lying in several Parishes, he must in this rate be accountable for them proportionable in the Parishes where they lye; but it seems reasonable, that for his personal Estate he should be chargeable in the Parish where he is an Inhabitant.

In rating Stock or Goods, it is to be rated according to the proportion of Land, Rent, as 5 or 6 pounds a year in Land to be held equal with 100 l. in Goods or Stock.

In a Parish where the Inhabitants by reason of their own poverty or fewness are not able to relieve their Poor, two Justices of the Peace, one being of the *Quorum*, may by Rates, tax other places and Parishes within the Hundred, or all the Hundred, if so necessity requires it; and this not proving sufficient, the Justices in their Sessions may Tax the County in part, or wholly if they think fit, *43 Eliz. Wing. Abr. Stat. Tit. poor People.* And if any person find himself agrieved by any act done by the Justices of the Peace or Overseers, they may for Redress apply themselves to the Justices in the Quarter Sessions, *Dalt. J. P. ch. 73. f. 160.*

If a Parish shall reach to and ly in two Countys, or one part thereof to lye in any City or Corporation Town, where there are proper Justices, they are then the Justices of each County, and

and are to meddle so much as appertains to the party lying in the County of which they are Justices, and so of the other parts; and yet the Overseers shall without dividing themselves execute their Office in all places within the said Parish, but shall give up their Accounts to the Justices or Head-officers of both places, *Wing. Abr. Stat. Tit. poor People, 43 Eliz. ch. 2 Dalt. J. P. ch. 73. f. 156.*

The Overseers of the Poor are within four days after their year is expired, and other Officers nominated their Successors, to give up their Account in truth before two Justices of the Peace, the one to be of the *Quorum* chiefly to this purpose.

First, What stock of Money they have Received or Rated, and not come to their hands; *Secondly*, What stock of Stuff or Ware is in their own, or in the hands of any of the Poor; *Thirdly*, What Apprentices they have put out and bound according to the Statute; *Fourthly*, What Poor they have set to Work or relieved; *Fifthly*, What Poor they have suffered to beg or wander out of the Town in the High-ways, or in their Town without their Directions; *Sixthly*, Whether they met Monthly to consider of such Matters as are properly belonging to their Office; *Seventhly*, Whether they have made their Rates indifferent upon the Parishioners according to their Ability; *Eighthly*, Whether they have truly endeavoured to gather and leavy all Assessments; *Ninthly*, Whether in them there has been any neglect of the Justices Warrants to them directed on any account, especially those for collecting any Forfeitures according to this Statute, 43 *Eliz. ch. 2 Dalt. J. P. ch. 73. fol. 153.*

Note, By the Statute made for the Burying in Woollen, 30 *Car. 2.* the Justices may not allow the Accounts of the Overseers of the Poor, till such time as they have given them an account of the

the Burials and Certificates, and of their leavying
the Penalty by that Statute directed.

If they refuse to give in their Accounts or make
and yield a true and perfect Account to the said
Justices, of such Money and Stock in their hands as
has been mentioned, two Justices of the Peace,
one being of the *Quorum*, may commit them to
the common Goal.

T H E

THE
OFFICE
OF THE
SURVEYORS
OF THE
High-ways and Bridges,
WITH
More particular Directions what they
are to do and observe therein.

CHAP. LIV.

*Of Surveyors of the High-ways, their Office and Duty
in mending the ways, and Rating; also of Scaven-
gers for London, Westminster, &c.*

THo' ways are generally called the King's High-
way, yet of ways there are three sorts;
1. A way where men have a just right to walk in,
pass and repass, 2. A common Foot-way and Horse-
way,

way, 3. A way for Carts and Wanes, and all sorts of Carriages, and this Latter is most properly called the King's High-way, free for himself and Subjects to pass and repass at all times; whereas some in the other sense are ways only to Grounds, Houses, &c. and ways by Custom, and some again upon sufferances in the publick ways; all Nuisances or Stopages are Enditable, especially if not timely removed on notice given, or the Lord of the Soil for any digging or spoiling the High-ways, may bring his Action against the Offenders.

The Surveyors duly chose by the other Officers, with the advice of the Inhabitants, or the Major part of them, upon publick notice before given, are diligently to oversee those that work on the days appointed; for the digging and carrying Gravel and other materials for mending such ways, where they shall find them Defective, giving them directions in order thereto, and upon publick notice or warning, the persons so qualified are to send their Carts and Labourers.

Every person having in his own Occupation a Plough-land in Tillage or Pasture, or keeping a Plough or draught in the same Parish, is liable to send according to the fashion and custom of the County wherein he resideth, or is so legally charged, a Wane or Cart with Oxen or Horses, fit for carriage and work of this Nature, attended by two able Men, who shall do such Work as shall be by the Surveyors appointed them, for the space of days working eight Hours every such day, under the penalty of forfeiting for every days default 10 s. and every other Householder, Cotter or Labourer not being a hired Servant, shall in person attend the service to Work or send an able Man in his stead under penalty for every days default to pay 12 d. and all other persons being no
 I other.

otherways chargeable but as Cottagers, being subsidy, five pounds in Goods or 40 s. by the year in Lands or above, they must find two able men to work in the Service.

It is in the discretion of the Surveyors, if there be more Carts or Wains, than are necessary, to appoint two able Men in lieu of a Team on forfeiture of 12 d. each in case of defect; and if in six days the ways cannot be conveniently mended, as is the usual time, they may set a farther time, but then they must make payment for it according to the rate of the County; and if hereupon there be no Agreement, the Justice may settle the Rate.

If materials be wanting, the Surveyors may take the small loose stones from any Man's Quarry, and such Rubish as he finds there, it being near the Road without paying for it, but must not dig nor take away the great stones, they may dig Gravel and Sand for the like use near any Highway in other Men's ground, not being their House, Yard, Orchard or Garden without paying for it, the Pit not exceeding 10 Foot in breadth and the like in length, which as soon as the Work is over, must be covered up and made good at their charge who caused it to be dig'd; or if it be not so filled up within the space of one Month, they forfeit five Marks to be recovered by the Owner by Action of Debt.

All Owners of Ground adjoyning to the Highways, are to keep their Hedges low and upright, that the Boughs or Brambles standing out may not hinder or offend Travellers, and that so the Sun may the better enter to dry the Roads for the better passage, and those who neglect so to do, are liable to be Presented and Indicted, forfeiting over and above the charge they will be put to of 10 s. and all Ditches must be kept stowed, that a free water-

water-course may be to drain the Roads, and for such neglect 12 d. is forfeited for every Rod, according to Stat. 18 *Eliz. ch. 10.* and the Surveyors are impowered to make Drains or Sluces for the better keeping the High-ways dry into any Ditch or Ground, and all Soil thrown out of Ditches into the Road, to be carried away by the party within six Months, under the penalty of 12 d. the Load, and if a Justice of the Peace finding any Nuisance in the Roads, he may present it, and two Justices, one being of the *Quorum*, may make an Amercement or Fine, and have power by Warrant to levy it by Distress, and the care of the Surveyor is to see all Bridges kept in repair, lying within his Division as the custom is, or has been in such cases, whether it lyes in the Parish to do it in private persons, by reason of any Tenure of Land or otherwise.

CHAP. LV.

How the Surveyor may reimburse himself of such Monies as he has laid out for Materials, &c.

IN this case where the Surveyor is obliged to buy Materials, it is Enacted 2 and 3 *W. and M.* that upon notice given by the Surveyors of the Highways to the Justices of the Peace at their Grand Sessions, and Oath made of what sum or sums of Money they have expended for Materials, where otherwise they could not be had, any two of the Justices may under their Hands and Seals cause a rate to be made upon all the Inhabitants of such Parish or Township for such Money as shall so be expended, according to the Methods and Rules prescribed in 43 *Eliz. chap. 2.* for the relief of the Poor, which Act directs the Tax to be laid on each

individual inhabitant, as Parson, Vicar and others, and every Occupier of House and Land, Tythes Improprate, Impropriation of Tythes, Colomnies, or under saleable Woods in the said Parish, and upon refusal of Payment when Assessed, it may be leavied by Distress, and by the 3 and 4 W. and M. there is a farther Provision, That Fine, Issue, Penalty, or Forfeiture in the case of High-ways, shall not be returned into the Exchequer or other Court, but leavied and put into the hands of the Surveyors, to be applied towards the repairing of the said High-ways; and if it be any other ways leavied or disposed, the Justices may take order in their Sessions to redress it.

CHAP. LVI.

Many other things relating to the Duty and Office of Surveyors of the High-ways.

ALl defects of repair of High-ways, Cawseways, Bridges or Pavements, are to be presented in the County where they lye, and in no other place, and that no such Presentment or Indictment shall be removed into the Queen's Bench by *Certiorari*, or otherwise out of the said County, till such Presentment or Indictment shall first be Traversed, and Judgment thereupon given 28 Car. 2. chap. 2.

And no Indictment, Present or Order by the Stat. 2 and 3 W. and M. is to be removed out of the County into any other Court, relating to the High-ways, &c. but are to be determined in the County where the same doth lye, and not elsewhere.

Trustees of Land given to the maintenance of
Cawse-

Cawseways, High-ways, Pavements and Bridges, are obliged to let them to Farm, at the most improving Rent without any Fine, and in their open Sessions, the Justices of the Peace may order the Improvement and Imployment of such Lands, and the profits arising thereby others, than such Lands as have been given to the uses aforesaid, to any College or Hall, in either of the Universities, who have their proper Visitors, according to the will of the Donor, and if it appears any person or persons have been faulty or negligent in the performance of their Trust, they may be punished by the Justices, &c.

If any person be Convicted of resisting the Surveyor, or Rescue any Goods or Chattels taken in Distress, being thereof convicted by two credible Witnesses, before any one Justice of the Peace, or upon view of the Justice himself, the party so offending is fineable 40 *d.* for every such offence; and if not payed in 7 days, he may be committed to the Goal of the County where the offence happened till it be paid, which is to be employed by the Surveyor towards the repairing the High-ways, &c. 22 *Car. 2. chap. 12.*

All travelling Carts, Wains or Carriages by way of common Carriage, are not on the publick High-way to travel with above 5 Beasts at length in a Team, and if with a greater number, then must they draw in Pairs two a Breast, except one Horse; and for default herein, the Offender or Owner of the Carriage, Waggon, &c. forfeits 40 *s.* one third part to the Surveyors of the High-ways, in whose Division the Offence is committed, another third part to the poor of the Parish, and the remaining third to the Informer, and this to be leavied by one Justice of the Peace, upon the Oath of one credible Witness, or upon the Justices own view,

view, who is to direct his Warrant to the High-constable or other Officer of the Division to that end; and the Surveyor seeing this offence, and neglecting his Duty herein, may in like manner be amerced any sum under Forty Shillings to be leavied by Warrant upon his Goods and Chattels.

C H A P. LVII.

The Office of Scavengers within the Cities of London, Westminster and Borrough of Southwark, &c.

THese are Officers who have Commissioners over them to see they effectually perform their Trust, and to take Cognizance of Vaults, Common Sewers and Drains, payment of the Rakers, and more is requisite, and to take notice the Streets, Lanes, Allies and other open Passages are kept clean and free from all Nausences, which defect in the Raker, or Inhabitants, will be redressed upon complaint made to the Commissioners, and the parties be punished, as the Statute made in these cases directs, viz. for throwing Rubish or any noisom thing that is offensive into the Street, or a hindrance to the Passage, the party so offending forfeits 5 s. and if thrown into common Drains so that it stops the Current, then 40 s.

If any Person hoop, wash, or cleanse any Barrels or other Cask, set out empty Casks to mend, hew rough Timber, or saw Stone, for any of these offences they shall pay 20 s. and ever Householder is to keep the Streets, Lanes, and other publick Passages so far as belongs to him, well Paved to the Chancel or middle of the Street or Lane, under the penalty of 20 s. for every Rod defective, and the like

like every week till it shall be so Paved or Mended, and the Scavengers or Commissioners are to enquire into all offences of this Nature, and the Raker for neglecting his duty, for every offence to pay 40 s.

Where new Streets are to be made, or places unpaved, there the Justices of Peace in their respective Divisions, may take a view, and as they see cause certify it under their hands to the Justices of the Peace at the next Quarter Sessions, who may take order for Paving or Amending as they think it most convenient, and all concerned upon notice from the Justices within a limited time, are to be complying herein, under the Penalty of 40 s. for every Pearch neglected to be paved within due time, and so accordingly for a greater or lesser quantity, and the like sum for every week it shall remain unpaved or amended; and any Scavenger duly chosen, refusing to take upon him the Office, for such contempt forfeits 10 l. to be levied by distress upon Warrant from a Justice of Peace, and for want of such distress, or non-payment within six days upon notice left at the parties House in Writing, he may by Warrant be committed to the common Goal of the City, Country, or place without relief till payment be made.

C H A P. LVIII.

Of Rates to be made and the time. How Scavengers must account for them, Penalties upon Refusal, &c.

IN 20 days after Scavengers is chosen, the Constable with other Officers and Parishioners, or the greater number of them, are to make an Assessment, or Rate pursuant to the pound Rate, up-

on the Inhabitants of their Parish, to be allowed and confirmed by two Justices of the Peace, and quarterly Collections to be made, and upon refusal of payment, distress by Warrant from two Justices of the Peace, and for want of such distress, the party may be Imprisoned till payment be made, unless a Peer.

The Scavengers must give an Account of what Moneys they receive yearly to two Justices of the Peace next Adjacent, within 28 days after the choice of new Scavengers for the year following, and to pay what remains in their hands to the new Scavengers; and upon refusal to make such account, two Justices may commit them to Prison, till they submit to it, and pay in the remainder of the Money.

And in Parishes where the High ways cannot be mended without the help of Assessment, it may be done on Occupiers and Owners of Lands or Tenements, or any personal Estate usually-ratable to the Poor, and collected by such Persons as the Justices of Peace shall appoint in their general Sessions.

C H A P. LIX.

Directions to Clerks of Justices of the Peace in many useful forms, and some remarks thereon which may also be useful to Officers of Parishes, &c.

HAVING spoken in the case of Parish Officers, and often mentioned therein Warrants, &c. it will not be improper that I close this useful Book with something briefly of that kind, which may be as well available to such Officers, as to the Clerks of Justices of Peace and others, in setting down such legal Forms or Presidents, as in several cases are required, viz. The

The Form of a Warrant for a reputed Bastard Child.

To Constable of B.

Middlesex. **W** Hereas complaint hath been made unto me J. G. one of Her Majestys Justices of the Peace, for the said County, by A. D. of a single Woman of your Town, that she is gotten with Child by L. C. also of your said Town, Butcher; these are therefore to will and require you, and in Her Majesty's Name, strictly to charge and command you, and either of you, that immediately upon receipt hereof, you attack the Body of the said L. C. and thereupon bring him before me, or some other of her Majesty's Justices of the Peace of the said County, to find sufficient sureties, as well for his Appearance at the next general Sessions of the Peace, to be holden for this County; as also for his good Behaviour towards Her Majesty, and all her leige People, in the mean time hereof fail not, as you will answer the contrary at your Peril. Dated, &c.

The Form of the Mittimus.

Middlesex. **I** Send you here withall the Body of L. C. of B. in the County of M. Butcher, brought before me this day, and charged by A. D. of the same Town, to have gotten her with Child, and for that, the said L. C. refuseth to put in security for Appearance at the next Quarter Sessions; and to the end he may be forth coming, when as order shall be taken for the relief and discharge of the said Town, and for the keeping of the said Child when it shall happen to be Born, according to the Statute in that case made and provided; these are therefore on Her Majesty's behalf, to charge and command you, that you immediately

mediately receive into your custody the said L. C. and him safely keep in your said Goal, till such time as he shall from thence be delivered by due course of Law, and hereof fail not as you will answer the contempt at your Peril. Dated, &c.

Observe here, that in all Mittimuses, it must be set down for what Fact or Cause the party is Committed, that it may be known to any other Justice of the Peace, whether he be Bailable or not, and directed to the Goal-keeper or his Deputy.

The Form of a Warrant for a Fugitive Person, &c.

To the Sheriff, &c.

Berks. **W** Hereas M. C. being lawfully retained in service with G. D. of B. &c. is departed from his said Master's Service before the end of his Term, without his Master's leave or licence, or without any reasonable cause contrary to the Laws and Statutes of the Realm, in this case provided. These are therefore to Command you, and every of you, or that some of you do attach the Body of the said M. C. and bring him before Me, or some other of Her Majesty's of the Peace, to find sufficient Sureties, well and faithfully to serve his Master, according to the Covenant between them made; and if he shall refuse so to do, that then you shall cause him safely to be conveyed to the common Goal of the County aforesaid, there to remain till he shall be willing to do the same, and see you certifie such your doings at the General Sessions of Peace, to be held for the said County. Given under the hand of me W. B. one of her Majesty's Justices of the Peace, within the said County. Dated, &c.

Or thus, That if that the said G. C. is willing his Master to serve again, you do cause him to be delivered, and if that to do he shall refuse, that then you cause him to be conveyed to the Goal, &c.

To bind one to give Evidence.

To the Constable of B. &c.

Surry **T**Hese are in Her Majesty's Name to charge and command you, or either of you, that immediately upon sight hereof, you or some of you do cause to come before Me, or some other of Her Majesty's Justices of the Peace for the said County; the Persons here under named, to the end that they and every of them may be bound to make their personal appearance at the next general Goal delivery (or Quarter Sessions) to be holden for this County, then and there to testifie their, and every of their knowledges concerning certain felonious Acts committed by one C. D. now Prisoner in the Marshalsea Prison in Southwark, the common Goal for the County aforementioned, and hereof fail not at your Peril. Dated, &c.

The Form of a Warrant to attack a Felon, or for Felony.

To the Constable of D. &c.

Essex. **F**Orasmuch as complaint hath been made unto me by W. D. that of late he hath had certain Goods feloniously taken from him, and that he hath in suspicion one L. C. of your said Town; these are therefore to will and require you, and in Her Majesty's Name, straitly to command you, and every of you, That immediately upon the receipt hereof, you do

(180)

do Attack the Body of the said L. C. and thereupon to bring him before me to answer the Premises, and hereof fail not at your Peril. Dated, &c.

And thus much for these matters so useful and profitable to be known, and so I Conclude.

F I N I S.



Books Printed for and Sold by John Baker at Mercer's-Chapel in Cheap-side.

Geography Rectified: Or, a Description of the World in all its Kingdoms, Provinces, Countries, Islands, Cities, Towns, Seas, Rivers, Bays, Capes, Ports; their Ancient and present Names, Inhabitants, Situations, Histories, Customs, Governments. As also their Commodities, Coines, Weights and Measures, compared with those at London; illustrated with Seventy Eight Maps, the fourth Edition; by *Robert Morden*.

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